S. HRG. 98-119

S. 1022, A BILL TO MAKE SMALL BUSINESSES OWNED BY AMERICAN INDIAN TRIBES ELIGIBLE FOR THE SBA 8(a) PROGRAM

HEARING

BEFORE THE

COMMITTEE ON SMALL BUSINESS
UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

FIRST SESSION

ON

S. 1022

A BILL TO MAKE SMALL BUSINESSES OWNED BY AMERICAN INDIAN TRIBES ELIGIBLE FOR THE SBA 8(a) PROGRAM

MAY 11, 1983

Printed for the use of the Committee on Small Business

U.S. GOVERNMENT PRINTING OFFICE

21-034 O WASHINGTON : 1983

572-21

COMMITTEE ON SMALL BUSINESS

LOWELL WEICKER, JR., Connecticut, *Chairman*

BOB PACKWOOD, Oregon
ORRIN G. HATCH, Utah
RUDY BOSCHWITZ, Minnesota
SLADE GORTON, Washington
DON NICKLES, Oklahoma
WARREN RUDMAN, New Hampshire
ALFONSE M. D'AMATO, New York
BOB KASTEN, Wisconsin
LARRY PRESSLER, South Dakota

SAM NUNN, Georgia
WALTER D. HUDDLESTON, Kentucky
DALE BUMPERS, Arkansas
JAMES R. SASSER, Tennessee
MAX BAUCUS, Montana
CARL LEVIN, Michigan
PAUL E. TSONGAS, Massachusetts
ALAN J. DIXON, Illinois
DAVID L. BOREN, Oklahoma

ROBERT J. DOTCHIN, *Staff Director*
ROBERT M. WILSON, *Counsel*
ALAN L. CHVOTKIN, *Minority Chief Counsel*

CONTENTS

Statement of Senators—	Page
Andrews, Hon. Mark, a U.S. Senator from the State of North Dakota	3
Baucus, Hon. Max, a U.S. Senator from the State of Montana	37
Melcher, Hon. John, a U.S. Senator from the State of Montana	38
Nickles, Hon. Don, a U.S. Senator from the State of Oklahoma	41
Weicker, Hon. Lowell, Jr., a U.S. Senator from the State of Connecticut, and chairman, Small Business Committee	1
Statement of—	
Fritz, John, Deputy Assistant Secretary, Department of the Interior	55
Hendricks, Marcus, business project manager, Cherokee Nation of Oklahoma	44
Hollow, Norman, chairman, Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Mont	27
Martin, Phillip, chief, Mississippi Band of Choctaw Indians, and president, National Tribal Chairman's Association	20
Moore, Rex, president, Devils Lake Sioux Manufacturing Corp., Fort Totten, N. Dak	49
National Congress of American Indians, Washington, D.C	58
Sonosky, Marvin J., general counsel, Sonosky, Chambers, Sachse & Guido, Washington, D.C	67
Williams, Al, president, Seabic Corp	64
Wright, Dr. Robert L., Associate Administrator for Minority Small Business and Capital Ownership Development, Small Business Administration, accompanied by Bob Webber, General Counsel, SBA	8

HEARING DATE

May 11, 1983:	
Afternoon session	1

S. 1022, A BILL TO MAKE SMALL BUSINESSES OWNED BY AMERICAN INDIAN TRIBES ELIGIBLE FOR THE SBA 8(a) PROGRAM

WEDNESDAY, MAY 11, 1983

U.S. SENATE,
SMALL BUSINESS COMMITTEE,
Washington, D.C.

The committee met, pursuant to notice, at 2:04 p.m., in room SR-432, Hon. Lowell Weicker, Jr. (chairman of the committee) presiding.

Present: Senators Weicker, Nickles, and Baucus.

Also present: Senators Melcher and Andrews.

Staff present: Alan L. Chvotkin, chief counsel, minority; Robert M. Wilson, counsel; and Dorothy C. Olson, hearing clerk.

STATEMENT OF HON. LOWELL WEICKER, JR., A U.S. SENATOR FROM THE STATE OF CONNECTICUT, AND CHAIRMAN, SMALL BUSINESS COMMITTEE

The CHAIRMAN. The committee will be in order.

Today the committee will hold a hearing on S. 1022, Senator Mark Andrews' bill to amend the Small Business Act to make it clear that small businesses owned by Indian tribes are eligible to participate in the Small Business Administration's section 8(a) program.

In recent years, Congress has recognized that the SBA 8(a) program is a valuable tool for promoting broader participation in our country's economic mainstream by members of socially and economically disadvantaged groups.

In Public Law 95-507 and most recently in Public Law 96-481, Congress has reaffirmed that the purpose of the 8(a) program is to foster business development opportunities for members of minority groups. Certainly Indian tribes, as well as individuals, should be included among those groups.

Rather than leave this question open to future interpretation of SBA General Counsels, it is important that the committee clarify that tribally owned firms are eligible. However, it is equally important that the committee carefully consider the specific provisions of S. 1022, in order to maintain the overriding purpose and integrity of the 8(a) program.

[The prepared statement of Senator Weicker follows:]

OPENING STATEMENT OF SENATOR LOWELL WEICKER, JR.
ON S. 1022 HEARING
MAY 11, 1983

GOOD AFTERNOON. TODAY THE COMMITTEE WILL HOLD A HEARING ON S. 1022, SENATOR ANDREWS' BILL TO AMEND THE SMALL BUSINESS ACT TO MAKE IT CLEAR THAT SMALL BUSINESSES OWNED BY INDIAN TRIBES ARE ELIGIBLE TO PARTICIPATE IN THE SMALL BUSINESS ADMINISTRATION'S SECTION 8(A) PROGRAM.

IN RECENT YEARS CONGRESS HAS RECOGNIZED THAT THE SBA 8(A) PROGRAM IS A VALUABLE TOOL FOR PROMOTING BROADER PARTICIPATION IN OUR COUNTRY'S ECONOMIC MAINSTREAM BY MEMBERS OF SOCIALLY AND ECONOMICALLY DISADVANTAGED GROUPS. IN PUBLIC LAW 95-507 AND MOST RECENTLY IN PUBLIC LAW 96-481, CONGRESS HAS REAFFIRMED THAT THE PURPOSE OF THE 8(A) PROGRAM IS TO FOSTER BUSINESS DEVELOPMENT OPPORTUNITIES FOR MEMBERS OF MINORITY GROUPS. CERTAINLY INDIAN TRIBES, AS WELL AS INDIVIDUALS, SHOULD BE INCLUDED AMONG THOSE GROUPS.

RATHER THAN LEAVE THIS QUESTION OPEN TO FUTURE INTERPRETATIONS OF SBA GENERAL COUNSELS, IT IS IMPORTANT THAT THE COMMITTEE CLARIFY THAT TRIBALLY-OWNED FIRMS ARE ELIGIBLE. HOWEVER, IT WILL ALSO BE IMPORTANT THAT THE COMMITTEE CAREFULLY CONSIDER THE SPECIFIC PROVISIONS OF S. 1022, IN ORDER TO MAINTAIN THE OVERRIDING PURPOSE AND INTEGRITY OF THE 8(A) PROGRAM.

The CHAIRMAN. We are privileged to have the author of the bill as our first witness, certainly one whose interest in all of humanity is unsurpassed in the U.S. Senate.

It is a great privilege to have Senator Mark Andrews with us. Senator, you go right ahead.

STATEMENT OF HON. MARK ANDREWS, A U.S. SENATOR FROM THE STATE OF NORTH DAKOTA

Senator ANDREWS. Thank you, Senator Weicker, and thank you for your generous comments. I appreciate your making this time available to me, and I will be brief.

I am pleased to be able to testify in support of S. 1022, a bill that will amend and clarify section 8(a) of the Small Business Act to treat businesses owned by Indian tribes as socially and economically disadvantaged small business concerns.

This action will benefit a group in our country, the native Americans, who have experienced dramatic economic and social improvement because of the 8(a) program.

Tribal eligibility for participation in the 8(a) program has never been completely clear. The statutory language and its legislative history do not provide specific guidance. The Small Business Administration, by administrative practice, has permitted tribally owned businesses to participate in the program. This administrative practice was sustained this past October in an SBA General Counsel's opinion that affirmed the eligibility of tribally owned businesses for the 8(a) program.

While I am pleased, of course, as I am sure the chairman is, that the SBA has bolstered its practice of allowing tribes to participate in the program with a General Counsel's opinion, I feel that it is time for Congress to clarify the law once and for all.

Currently, there are less than 15 tribally owned businesses in the program. Hopefully, this statutory clarification will allow for increased use of the program by the tribes.

Tribally owned businesses, Mr. Chairman, currently participating in the 8(a) program are doing a fine job. These businesses know the meaning of economic development. The businesses employ local Indian people and thereby form a base for the beginning of a stable economy in otherwise economically isolated and disadvantaged areas.

Mr. Chairman, from my own personal experiences, let me share with you what I have observed. When we put a business of this type on or near an Indian reservation, those Indians who have a job are the ones who have the homes painted, the yards maintained, the children going to school on a regular occurrence; they break the ties with the welfare programs that have so long dominated their lives and their families' lives.

It is one of the greatest investments we can make, Mr. Chairman, and I would hope that we can pass this bill out.

Most of the Indian tribes, as you know, are located in socially and economically isolated areas. Until recently, it was very difficult for young Indian people to achieve a good education. Although this is changing, there are still relatively few Indians living in res-

ervation areas who possess the adequate business management training necessary to completely run a business operation.

The Indian witnesses here today can explain, based on their own personal experience, how the management contracts work and why they are very necessary. I would like to point out, in my own opinion, that this provision is necessary to realistically provide the economic development and job opportunities so lacking in Indian country.

The Devils Lake Sioux, which owns the Devils Lake Sioux Manufacturing Corp., an 8(a) firm, has been able just recently to provide 4-year scholarships to two tribal members every year, with the commitment from these youngsters to return to the reservation and work in the management of their own company.

Devils Lake Sioux Manufacturing also has a summer job program which, without any Federal or State moneys, employs over 120 students during the summer, giving these students the opportunity to earn money for college and providing an on-the-job learning education.

The two 8(a) Indian-owned businesses in my own State, Devils Lake Sioux Manufacturing and Turtle Mountain Manufacturing Co., are providing incentives for tribal members to complete their education and obtain a good, steady job. The college-educated tribal members are returning to the reservation and taking an active role in the operation of these businesses.

Mr. Chairman, I would also like to point out that the Government benefits doubly from the tribes' involvement in the 8(a) program. First, we get a good solid product at minimal cost; second, we save money that would otherwise go to the unemployed.

I urge your committee to take action to support S. 1022, and I thank you very much for your time, your cooperation, and your great understanding.

[The prepared statement of Senator Andrews follows:]

STATEMENT OF SENATOR MARK ANDREWS
ON
S. 1022

MR. CHAIRMAN, I AM PLEASED TO BE ABLE TO TESTIFY IN SUPPORT OF S. 1022, A BILL THAT WILL AMEND AND CLARIFY SECTION 8(A) OF THE SMALL BUSINESS ACT TO TREAT BUSINESSES OWNED BY INDIAN TRIBES AS SOCIALLY AND ECONOMICALLY DISADVANTAGED SMALL BUSINESS CONCERNS. THIS ACTION WILL BENEFIT A GROUP IN OUR COUNTRY, THE NATIVE AMERICANS, WHO HAVE EXPERIENCED DRAMATIC ECONOMIC AND SOCIAL IMPROVEMENT BECAUSE OF THE 8(A) PROGRAM.

TRIBAL ELIGIBILITY FOR PARTICIPATION IN THE 8(A) PROGRAM HAS NEVER BEEN COMPLETELY CLEAR. THE STATUTORY LANGUAGE AND ITS LEGISLATIVE HISTORY DO NOT PROVIDE SPECIFIC GUIDANCE. THE SMALL BUSINESS ADMINISTRATION (SBA), BY ADMINISTRATIVE PRACTICE, HAS PERMITTED TRIBALLY-OWNED BUSINESSES TO PARTICIPATE IN THE PROGRAM. THIS ADMINISTRATIVE PRACTICE WAS SUSTAINED THIS PAST OCTOBER IN AN SBA GENERAL COUNSEL'S OPINION THAT AFFIRMED THE ELIGIBILITY OF TRIBALLY-OWNED BUSINESSES FOR THE 8(A) PROGRAM.

WHILE I AM PLEASED THAT THE SBA HAS BOLSTERED ITS PRACTICE OF ALLOWING TRIBES TO PARTICIPATE IN THE PROGRAM WITH A GENERAL COUNSEL'S OPINION, I FEEL THAT IT IS TIME FOR CONGRESS TO CLARIFY THE LAW, ONCE AND FOR ALL. CURRENTLY, THERE ARE LESS THAN 15 TRIBALLY-OWNED BUSINESSES IN THE PROGRAM. HOPEFULLY, THIS STATUTORY CLARIFICATION WILL ALLOW FOR INCREASED USE OF THE PROGRAM BY TRIBES.

21-034 O - 83 - 2

THE TRIBALLY-OWNED BUSINESSES CURRENTLY PARTICIPATING IN THE 8(A) PROGRAM ARE DOING A FINE JOB. THESE BUSINESSES KNOW THE MEANING OF ECONOMIC DEVELOPMENT. THE BUSINESSES EMPLOY LOCAL INDIAN PEOPLE AND THEREBY FORM A BASE FOR THE BEGINNING OF A STABLE ECONOMY IN OTHERWISE ECONOMICALLY ISOLATED AND DISADVANTAGED AREAS.

WHILE THE CONCEPT OF TRIBAL OWNERSHIP IS FOREIGN TO MANY OF US IN WASHINGTON, HOWEVER, THE CO-SPONSORS OF THIS BILL AND I KNOW THAT SUCH BUSINESSES CAN ACHIEVE SUCCESS.

THERE HAS BEEN MUCH DISCUSSION OF THE SECTION IN S. 1022 WHICH WOULD ALLOW TRIBES TO CONTRACT FOR THE MANAGEMENT OF TRIBALLY-OWNED BUSINESSES. THIS TYPE OF CONTRACT, OF COURSE, MUST BE REVIEWED BY THE SECRETARY OF THE INTERIOR. THESE CONTRACTS ALLOW FOR THE DAILY REVIEW AND CONTROL BY THE TRIBE, OR ITS BOARD OF DIRECTORS OF THE COMPANY. THIS REVIEW PROCESS PROVIDES A SAFEGUARD THAT WOULD PREVENT ANY NON-INDIAN MANAGEMENT GROUP FROM USING THE TRIBE AS A FRONT FOR THE BUSINESS AND ABUSING THE 8(A) CONCEPT. THE INDIAN WITNESSES HERE TODAY CAN EXPLAIN, BASED ON THEIR OWN PERSONAL EXPERIENCE, HOW THE MANAGEMENT CONTRACTS WORK AND WHY THEY ARE NECESSARY. BUT, I WOULD LIKE TO POINT OUT THAT, IN MY OPINION, THIS PROVISION IS NECESSARY TO REALISTICALLY PROVIDE THE ECONOMIC DEVELOPMENT AND JOB OPPORTUNITIES SO LACKING IN INDIAN COUNTRY.

MOST OF THE INDIAN TRIBES ARE LOCATED IN SOCIALLY AND ECONOMICALLY ISOLATED AREAS. UNTIL RECENTLY, IT WAS VERY DIFFICULT FOR YOUNG INDIAN PEOPLE TO ACHIEVE A GOOD EDUCATION. ALTHOUGH THIS IS CHANGING, THERE ARE STILL RELATIVELY FEW INDIANS LIVING IN RESERVATION AREAS WHO POSSESS THE ADEQUATE BUSINESS MANAGEMENT TRAINING NECESSARY TO COMPLETELY RUN

A BUSINESS OPERATION. THE DEVILS LAKE SIOUX, WHICH OWNS THE DEVILS LAKE SIOUX MANUFACTURING CORPORATION (DLSMC), AN 8(A) FIRM, HAS BEEN ABLE, JUST RECENTLY, TO PROVIDE FOUR-YEAR SCHOLARSHIPS TO TWO TRIBAL MEMBERS EVERY YEAR, WITH THE COMMITMENT FROM THESE YOUNGSTERS TO RETURN TO THE RESERVATION AND WORK IN THE MANAGEMENT OF THE COMPANY. DLSMC ALSO HAS A SUMMER JOB PROGRAM, WHICH, WITHOUT ANY FEDERAL OR STATE MONIES, EMPLOYS OVER 120 STUDENTS DURING THE SUMMER, GIVING THESE STUDENTS THE OPPORTUNITY TO EARN MONEY FOR COLLEGE AND PROVIDING AN ON-THE-JOB LEARNING EDUCATION.

THE TWO 8(A) INDIAN-OWNED BUSINESSES IN MY STATE, DLSMC AND TURTLE MOUNTAIN MANUFACTURING COMPANY, ARE PROVIDING INCENTIVES FOR TRIBAL MEMBERS TO COMPLETE THEIR EDUCATIONS AND OBTAIN A GOOD, STEADY JOB. THE COLLEGE-EDUCATED TRIBAL MEMBERS ARE RETURNING TO THE RESERVATION AND TAKING AN ACTIVE ROLE IN THE OPERATION OF THESE BUSINESSES.

MR. CHAIRMAN, I WOULD ALSO LIKE TO POINT OUT THAT THE GOVERNMENT BENEFITS DOUBLY FROM THE TRIBES' INVOLVEMENT IN THE 8(A) PROGRAM. FIRST, WE GET A GOOD SOLID PRODUCT AT MINIMAL COST AND, SECOND, WE SAVE MONEY THAT WOULD OTHERWISE GO TO THE UNEMPLOYED. I URGE THIS COMMITTEE TO TAKE ACTION TO SUPPORT S. 1022.

THANK YOU FOR YOUR TIME AND COOPERATION.

The CHAIRMAN. Senator Andrews, I know that you have an appointment at the White House, which means you have to leave immediately, but let me say this to you, that I could not agree more with you in your observations both as to the program and its relativity to Indian tribes.

Senator ANDREWS. We know that, Mr. Chairman, and when the Devils Lake Sioux Manufacturing Co. was threatened with the immediate decision to terminate their 8(a) contracts by the Small Business Administration, I might say to my native Americans who are here today that you and your staff were of great help to us in overturning that idiotic decision that was about to be made. Without your help, without your understanding, we never could have kept that manufacturing company going, providing those jobs.

The CHAIRMAN. I concur with the essence of your bill. The legislation certainly will have the support of this Senator, and I would hope to work out any disparities with the Small Business Administration and, hopefully, have something on the floor of the Senate in a relatively short period of time.

So I commend you for bringing this forward. It was an oversight when the legislative language was written; it was never intended to exclude native Americans from the program. I think it's time to set the record straight so we don't have to rely on different interpretations.

Certainly, Administrator Sanders and his staff have been very helpful in this matter. However, I don't want to have to bump along from administration to administration to administration. This is a program that Indian tribes should be able to participate in just as any other constituency that meets the program guidelines. So you have the support of the chairman.

Senator ANDREWS. Mr. Chairman, if you or your staff have any questions about it, let me offer the help of myself and the staff of our Select Committee on Indian Affairs. We will be glad to give you any background information and answer any possible questions that might come up during your consideration of this very vitally needed piece of legislation.

I appreciate your understanding.

The CHAIRMAN. We are looking forward to talking with you, and we thank you for doing a favor for the entire small business community in bringing this matter to our attention. We appreciate it.

Senator ANDREWS. Thank you, Mr. Chairman.

The CHAIRMAN. All right, I think I see my good friend, Dr. Wright. Dr. Wright, we welcome you before the committee.

Bob, why don't you go ahead and introduce your associate and then make your statement.

STATEMENT OF DR. ROBERT L. WRIGHT, ASSOCIATE ADMINISTRATOR FOR MINORITY SMALL BUSINESS AND CAPITAL OWNERSHIP DEVELOPMENT, SMALL BUSINESS ADMINISTRATION, ACCOMPANIED BY BOB WEBBER, GENERAL COUNSEL, SBA

Dr. WRIGHT. Thank you very much, Mr. Chairman.

We have with us today Mr. Bob Webber, the General Counsel of the Small Business Administration.

I would like to thank you, Mr. Chairman, for inviting me to participate in your legislative hearings on S. 1022, a bill introduced by Senator Mark Andrews to make small business concerns owned by Indian tribes eligible for the Small Business Administration's 8(a) program.

I might add that Senator Andrews has worked intensively with our agency to insure that Indian-owned businesses are promoted. We appreciate the Senator's strong commitment to this worthy endeavor and look forward to cooperating with Congress to achieve this laudable goal.

SBA supports the position that small businesses owned by Indian tribes be considered eligible for participation in the section 8(a) program. An opinion by our Office of General Counsel has served as the basis for that position since October 8, 1982.

The view that tribally owned enterprises, like individually owned enterprises, are eligible for participation in the 8(a) program would seem on the surface, at least, to conflict with the express language of the Small Business Act, which refers to small business concerns owned and controlled by socially and economically disadvantaged individuals as appropriate participants for the 8(a) program.

Section 2(e) of the Small Business Act presently provides that it is the purpose of section 8(a) to "foster business ownership by individuals who are both socially and economically disadvantaged."

However, while this statutory language suggests that the eligibility of firms for the 8(a) program is limited to those enterprises owned by individuals, our General Counsel has found that such a narrow reading of the statute ignores both the realities of American Indian social and economic organizations as embodied in the tribe as well as the unique legal status enjoyed by the Indian tribes themselves.

In addition, such a narrow reading would frustrate the remedial purpose of the 8(a) program which is to provide aid to those groups in our society which historically have been the victims of invidious discrimination. Therefore, we have taken the position that tribally owned businesses may participate in the program under the present statutory provisions.

Under that position, the eligibility of tribally owned firms involves two determinations. First, the tribe itself has to make a showing satisfactory to SBA that it is economically disadvantaged. This involves nothing more than reference to available economic data showing the tribe's economic condition. It does not involve a determination as to the social and economic disadvantage of individual tribe members.

The second eligibility determination, however, involves a finding by SBA that the individual tribal members responsible for the daily management and control of the enterprise are socially and economically disadvantaged. This latter determination fulfills the statutory goal of fostering the development of individual entrepreneurs from groups presently owning and controlling small productive capital which presently is mandated by the Small Business Act. SBA is now in the process of promulgating regulations to codify this position.

As indicated above, the section 8(a) program is a business development program. The major intent of the program is to assist indi-

viduals who are socially and economically disadvantaged to enter the mainstream of the American business system.

The procurement authority contained in section 8(a) is a tool for developing business ownership and business management skills by members of groups that own and control little productive capital. In fact, Congress has found that the broadening of small business ownership among groups that presently own and control little productive capital is essential to provide for the well-being of this Nation by promoting their increased participation in the free enterprise system of the United States. And this finding serves as a basis for the program.

Native Americans were among those racial and ethnic groups which Congress expressly intended to participate in the 8(a) program. For this reason, there is no question but that indivdual Indians, whether or not living in a tribal setting, may be able to show social and economic disadvantage and thus have their firms participate in the 8(a) program.

But, as discussed above, given the nature of Indian tribal society and the identity of many individual Indians with the tribe, their participation in the free enterprise system must be linked to their tribe and its economic development. For these Indians, tribal affiliation is fundamental to their unique status. This is why SBA has recognized this reality in implementing the 8(a) program, in order to assure Indians who continue to live in tribes the opportunity to participate in this program.

Since this recognition has required a somewhat creative interpretation of present statutory authority, SBA would welcome an amendment to the Small Business Act to clarify the basis for our present position. In this regard, S. 1022 represents a welcome vehicle. SBA supports the bill's overall intent of clarifying the language of the Small Business Act to make it clear that Indian tribes are afforded the same eligibility status for the 8(a) program as other named minority groups.

However, we do have three suggestions for changes to the bill which we would like to discuss. We feel these changes would clarify its intent and make it consistent with the purpose of the section 8(a) program.

First, we suggest that the amendment contained in paragraph 4(a) of section 8(a) would elevate all Indian tribes to the presumptive status of being socially and economically disadvantaged for the purposes of the section 8(a) program. This would afford tribes a status in excess of that afforded to other minority groups, including native Americans not living in tribes, which are presently mentioned in the statute.

We would favor amending the bill to provide that tribes would have the same status as other named minority groups for the purpose of the section 8(a) program, and we would be pleased to work with the committee and the Department of Interior to develop such an amendment.

Similarly, in principle, we oppose the provision of the bill which would amend paragraph 4(b) of section 8(a) of the Act to permit control of the daily management and business operations of tribally owned participants in the section 8(a) program to be in the hands of third parties pursuant to management agreements. Mr.

Chairman, we have had a long and unfortunate history of front companies in the section 8(a) program which such a provision would perpetuate. The provision as written is contrary to our present policy of not permitting management agreements for fear of encouraging fronts, and if it were enacted, it would severely damage that policy.

In addition, it is our view, based on experience in administering the program, that permitting management of section 8(a) firms by third parties does not result in the business development of socially and economically disadvantaged program participants, which is the main purpose of this program.

Finally, the portion of the bill which defines the term "Indian tribes" extends coverage to tribes or other groups which are recognized by States in which such tribes or groups reside as well as those recognized by the United States. We are concerned, first of all, that extension of coverage to State-recognized groups and tribes may be inconsistent with the operation of other Federal laws which are intended to benefit Indians. Our own research indicates that, generally, these other statutory provisions, and the programs they establish, relate only to tribes and groups recognized by the Federal Government, and we believe that the section 8(a) program can be administered more easily if the coverage for its purposes is consistent with other Federal law in this regard.

In addition, we feel the considerations of prudent program administration argue that tribal eligibility for the considerable benefits of the 8(a) program should extend only to Indian tribes that are officially recognized by the United States Government.

Mr. Chairman, this concludes my prepared statement. I, along with our General Counsel, will be willing to answer any questions that you may have.

[The prepared statement of Dr. Wright follows:]

SBA U.S. Small Business Administration Washington, DC 20416

File: 6-L

(#1585C)

STATEMENT OF
DR. ROBERT L. WRIGHT, ASSOCIATE ADMINISTRATOR
FOR MINORITY SMALL BUSINESS AND
CAPITAL OWNERSHIP DEVELOPMENT
SMALL BUSINESS ADMINISTRATION
BEFORE THE
COMMITTEE ON SMALL BUSINESS
UNITED STATES SENATE

MAY 11, 1983

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

THANK YOU FOR INVITING ME TO PARTICIPATE IN YOUR LEGISLATIVE HEARINGS ON S. 1022, A BILL INTRODUCED BY SENATOR MARK ANDREWS TO MAKE SMALL BUSINESS CONCERNS OWNED BY INDIAN TRIBES ELIGIBLE FOR THE SMALL BUSINESS ADMINISTRATION'S 8(A) PROGRAM.

SENATOR ANDREWS HAS WORKED INTENSIVELY WITH OUR AGENCY TO INSURE THAT INDIAN OWNED BUSINESSES ARE PROMOTED. WE APPRECIATE THE SENATOR'S STRONG COMMITMENT TO THIS WORTHY ENDEAVOR AND LOOK FORWARD TO COOPERATING WITH CONGRESS TO ACHIEVE THIS LAUDABLE GOAL.

SBA SUPPORTS THE POSITION THAT SMALL BUSINESSES OWNED BY INDIAN TRIBES BE CONSIDERED ELIGIBLE FOR PARTICIPATION IN

BEST COPY AVAILABLE

THE SECTION 8(A) PROGRAM. AN OPINION OF OUR OFFICE OF GENERAL COUNSEL HAS SERVED AS THE BASIS FOR THAT POSITION SINCE OCTOBER 8, 1982.

THE VIEW THAT TRIBALLY OWNED ENTERPRISES, LIKE INDIVIDUALLY OWNED ENTERPRISES, ARE ELIGIBLE FOR PARTICIPATION IN THE 8(A) PROGRAM WOULD SEEM ON THE SURFACE, AT LEAST, TO CONFLICT WITH THE EXPRESS LANGUGAGE OF THE SMALL BUSINESS ACT, WHICH REFERS TO SMALL BUSINESS CONCERNS OWNED AND CONTROLLED BY SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS AS APPROPRIATE PARTICIPANTS FOR THE 8(A) PROGRAM. SECTION 2(E) OF THE SMALL BUSINESS ACT PRESENTLY PROVIDES THAT IT IS THE PURPOSE OF SECTION 8(A) TO "FOSTER BUSINESS OWNERSHIP BY INDIVIDUALS WHO ARE BOTH SOCIALLY AND ECONOMICALLY DISADVANTAGED."

ELIGIBILITY OF TRIBALLY OWNED BUSINESSES

HOWEVER, WHILE THIS STATUTORY LANGUAGE SUGGESTS THAT THE ELIGIBILITY OF FIRMS FOR THE 8(A) PROGRAM IS LIMITED TO THOSE ENTERPRISES OWNED BY INDIVIDUALS, OUR GENERAL COUNSEL HAS FOUND THAT SUCH A NARROW READING OF THE STATUTE IGNORES BOTH THE REALITIES OF AMERICAN INDIAN SOCIAL AND ECONOMIC ORGAZNIZATIONS AS EMBODIED IN THE TRIBE, AS WELL AS THE UNIQUE LEGAL STATUS ENJOYED BY

BEST COPY AVAILABLE

INDIAN TRIBES. IN ADDITION, SUCH A NARROW READING WOULD FRUSTRATE THE REMEDIAL PURPOSE OF THE 8(A) PROGRAM WHICH IS TO PROVIDE AID TO THOSE GROUPS IN OUR SOCIETY WHICH HISTORICALLY HAVE BEEN THE VICTIMS OF INVIDIOUS DISCRIMINATION. THEREFORE, WE HAVE TAKEN THE POSITION THAT TRIBALLY OWNED BUSINESSES MAY PARTICIPATE IN THE PROGRAM UNDER THE PRESENT STATUTORY PROVISIONS.

NECESSARY DETERMINATIONS FOR COMPLIANCE

UNDER THAT POSITION, THE ELIGIBILITY OF TRIBALLY OWNED FIRMS INVOLVES TWO DETERMINATIONS. FIRST, THE TRIBE ITSELF HAS TO MAKE A SHOWING SATISFACTORY TO SBA THAT IT IS ECONOMICALLY DISADVANTAGED. THIS INVOLVES NOTHING MORE THAN REFERENCE TO AVAILABLE ECONOMIC DATA SHOWING THE TRIBE'S ECONOMIC CONDITION. IT DOES NOT INVOLVE A DETERMINATION AS TO THE SOCIAL AND ECONOMIC DISADVANTAGE OF INDIVIDUAL TRIBE MEMBERS. THE SECOND ELIGIBILITY DETERMINATION, HOWEVER, INVOLVES A FINDING BY SBA THAT THE INDIVIDUAL TRIBAL MEMBERS RESPONSIBLE FOR THE DAILY MANAGEMENT AND CONTROL OF THE ENTERPRISE ARE SOCIALLY AND ECONOMICALLY DISADVANTAGED. THIS LATTER DETERMINATION FULFILLS THE STATUTORY GOAL OF FOSTERING THE DEVELOPMENT OF INDIVIDUAL ENTREPRENEURS FROM GROUPS PRESENTLY OWNING AND CONTROLLING LITTLE PRODUCTIVE CAPITAL WHICH PRESENTLY

BEST COPY AVAILABLE

IS MANDATED BY THE SMALL BUSINESS ACT. SBA IS NOW IN THE PROCESS OF PROMULGATING REGULATIONS TO CODIFY THIS POSITION.

SECTION 8(A) - BUSINESS DEVELOPMENT PROGRAM

AS INDICATED ABOVE, THE SECTION 8(A) PROGRAM IS A BUSINESS DEVELOPMENT PROGRAM. THE MAJOR INTENT OF THE PROGRAM IS TO ASSIST INDIVIDUALS WHO ARE SOCIALLY AND ECONOMICALLY DISADVANTAGED TO ENTER THE MAINSTREAM OF THE AMERICAN BUSINESS SYSTEM. THE PROCUREMENT AUTHORITY CONTAINED IN SECTION 8(A) IS A TOOL FOR DEVELOPING BUSINESS OWNERSHIP AND BUSINESS MANAGEMENT SKILLS BY MEMBERS OF GROUPS THAT OWN AND CONTROL LITTLE PRODUCTIVE CAPITAL. IN FACT, CONGRESS HAS FOUND "THAT THE BROADENING OF SMALL BUSINESS OWNERSHIP AMONG GROUPS THAT PRESENTLY OWN AND CONTROL LITTLE PRODUCTIVE CAPITAL IS ESSENTIAL TO PROVIDE FOR THE WELL BEING OF THIS NATION BY PROMOTING THEIR INCREASED PARTICIPATION IN THE FREE ENTERPRISE SYSTEM OF THE UNITED STATES", AND THIS FINDING SERVES AS A BASIS FOR THE PROGRAM.

NATIVE AMERICANS

"NATIVE AMERICANS" WERE AMONG THOSE RACIAL AND ETHNIC GROUPS WHICH CONGRESS EXPRESSLY INTENDED TO PARTICIPATE IN

BEST COPY AVAILABLE

THE 8(A) PROGRAM. FOR THIS REASON, THERE IS NO QUESTION BUT THAT INDIVIDUAL INDIANS, WHETHER OR NOT LIVING IN A TRIBAL SETTING, MAY BE ABLE TO SHOW SOCIAL AND ECONOMIC DISADVANTAGE AND THUS HAVE THEIR FIRMS PARTICIPATE IN THE 8(A) PROGRAM. BUT, AS DISCUSSED ABOVE, GIVEN THE NATURE OF INDIAN TRIBAL SOCIETY AND THE IDENTITY OF MANY INDIVIDUAL INDIANS WITH THE TRIBE, THEIR PARTICIPATION IN THE FREE ENTERPRISE SYSTEM MUST BE LINKED TO THEIR TRIBE AND ITS ECONOMIC DEVELOPMENT. FOR THESE INDIANS, TRIBAL AFFILIATION IS FUNDAMENTAL TO THEIR UNIQUE STATUS. THIS IS WHY SBA HAS RECOGNIZED THIS REALITY IN IMPLEMENTING THE 8(A) PROGRAM, IN ORDER TO ASSURE INDIANS WHO CONTINUE TO LIVE IN TRIBES THE OPPORTUNITY TO PARTICIPATE IN THE PROGRAM.

SINCE THIS RECOGNITION HAS REQUIRED A SOMEWHAT CREATIVE INTERPRETATION OF PRESENT STATUTORY AUTHORITY, SBA WOULD WELCOME AMENDMENT OF THE SMALL BUSINESS ACT TO CLARIFY THE BASIS FOR OUR PRESENT POSITION. IN THIS REGARD, S. 1022 REPRESENTS A WELCOME VEHICLE. SBA SUPPORTS THE BILL'S OVERALL INTENT OF CLARIFYING THE LANGUAGE OF THE SMALL BUSINESS ACT TO MAKE IT CLEAR THAT INDIAN TRIBES ARE AFFORDED THE SAME ELIGIBILITY STATUS FOR THE 8(A) PROGRAM AS THE OTHER NAMED MINORITY GROUPS. HOWEVER, WE DO HAVE THREE SUGGESTIONS FOR CHANGES TO THE BILL WHICH WE WOULD

BEST COPY AVAILABLE

LIKE TO DISCUSS. WE FEEL THESE CHANGES WOULD CLARIFY ITS INTENT, AND MAKE IT CONSISTENT WITH THE PURPOSE OF THE SECTION 8(A) PROGRAM.

SBA PROPOSED AMENDMENTS TO S.1022

FIRST, WE SUGGEST THAT THE AMENDMENT OF PARAGRAPH (4)(A) OF SECTION 8(A) WOULD ELEVATE ALL INDIAN TRIBES TO THE PRESUMPTIVE STATUS OF BEING SOCIALLY AND ECONOMICALLY DISADVANTAGED FOR THE PURPOSES OF THE SECTION 8(A) PROGRAM. THIS WOULD AFFORD TRIBES A STATUS IN EXCESS OF THAT AFFORDED TO THE OTHER MINORITY GROUPS, INCLUDING NATIVE AMERICANS NOT LIVING IN TRIBES, WHICH ARE PRESENTLY MENTIONED IN THE STATUTE. WE WOULD FAVOR AMENDING THE BILL TO PROVIDE THAT TRIBES WOULD HAVE THE SAME STATUS AS THE OTHER NAMED MINORITY GROUPS FOR THE PURPOSE OF THE SECTION 8(A) PROGRAM, AND WOULD BE PLEASED TO WORK WITH THE COMMITTEE AND THE DEPARTMENT OF INTERIOR TO DEVELOP SUCH AN AMENDMENT.

SIMILARLY IN PRINCIPLE, WE OPPOSE THE PROVISION OF THE BILL WHICH WOULD AMEND PARAGRAPH (4)(B) OF SECTION 8(A) OF THE ACT TO PERMIT CONTROL OF THE DAILY MANAGEMENT AND BUSINESS OPERATIONS OF TRIBALLY OWNED PARTICIPANTS IN THE SECTION 8(A) PROGRAM TO BE IN THE HANDS OF THIRD PARTIES PURSUANT TO MANAGEMENT AGREEMENTS. WE HAVE HAD A LONG AND

BEST COPY AVAILABLE

UNFORTUNATE HISTORY OF "FRONT COMPANIES" IN THE SECTION 8(A) PROGRAM WHICH SUCH A PROVISION WOULD PERPETUATE. THE PROVISION AS WRITTEN IS CONTRARY TO OUR PRESENT POLICY OF NOT PERMITTING MANAGEMENT AGREEMENTS FOR FEAR OF ENCOURAGING FRONTS, AND IF IT WERE ENACTED WOULD SEVERELY DAMAGE THAT POLICY. IN ADDITION, IT IS OUR VIEW BASED ON EXPERIENCE IN ADMINISTERING THE PROGRAM, THAT PERMITTING MANAGEMENT OF SECTION 8(A) FIRMS BY THIRD PARTIES DOES NOT RESULT IN THE BUSINESS DEVELOPMENT OF SOCIALLY AND ECONOMICALLY DISADVANTAGED PROGRAM PARTICIPANTS WHICH IS THE MAIN PURPOSE OF THE PROGRAM.

FINALLY, THE PORTION OF THE BILL WHICH DEFINES THE TERM INDIAN TRIBE EXTENDS COVERAGE TO TRIBES OR OTHER GROUPS WHICH ARE RECOGNIZED BY THE STATES IN WHICH SUCH TRIBES OR GROUPS RESIDE AS WELL AS THOSE RECOGNIZED BY THE UNITED STATES. WE ARE CONCERNED FIRST OF ALL THAT EXTENSION OF COVERAGE TO STATE-RECOGNIZED GROUPS AND TRIBES MAY BE INCONSISTENT WITH THE OPERATION OF OTHER FEDERAL LAWS WHICH ARE INTENDED TO BENEFIT INDIANS. OUR OWN RESEARCH INDICATES THAT GENERALLY THESE OTHER STATUTORY PROVISIONS, AND THE PROGRAMS THEY ESTABLISH, RELATE ONLY TO TRIBES AND GROUPS RECOGNIZED BY THE FEDERAL GOVERNMENT, AND WE BELIEVE THE SECTION 8(A) PROGRAM CAN BE ADMINISTERED MORE EASILY IF THE COVERAGE FOR ITS PURPOSES IS CONSISTENT WITH OTHER FEDERAL LAW IN THIS REGARD. IN ADDITION WE FEEL

BEST COPY AVAILABLE

THAT CONSIDERATIONS OF PRUDENT PROGRAM ADMINISTRATION ARGUE THAT TRIBAL ELIGIBILITY FOR THE CONSIDERABLE BENEFITS OF THE 8(A) PROGRAM SHOULD EXTEND ONLY TO INDIAN TRIBES THAT ARE OFFICIALLY RECOGNIZED BY THE U.S. GOVERNMENT.

MR. CHAIRMAN, THIS CONCLUDES MY PREPARED STATMENT. I WILL BE PLEASED TO ANSWER ANY QUESTIONS.

The CHAIRMAN. Thank you, Bob. I really don't have any questions at this juncture.

I have taken note of the changes that you would like to see made, and I might add, I couldn't agree with you more on the second change relative to "front" organizations. We have seen that abused and abused and abused. Certainly, when we have a chance to start from scratch as we do here, I don't want to go ahead and introduce the same possibility into the procedure.

Dr. WRIGHT. Right.

The CHAIRMAN. This is meant to benefit Indian tribes, not meant to benefit somebody who wants to benefit from Indian tribes.

Dr. WRIGHT. Absolutely.

The CHAIRMAN. That is what it boils down to.

I would hope that our staffs could work out these changes with you. Senator Andrews' staff will be invited to sit in and see if we can bring this to the point where it will have the wholehearted approval of the administration and the Small Business Administration.

Dr. WRIGHT. Very good.

The CHAIRMAN. I think your statement is very clear on its face, and I have no questions at this time.

I am delighted to have your support for the legislation. Thank you.

Dr. WRIGHT. Thank you very much, Mr. Chairman.

The CHAIRMAN. Now we have a panel: Rex Moore, president of the Devils Lake Sioux Manufacturing Corp. at Fort Totten, N. Dak.; Mr. Norman Hollow, chairman of the Fort Peck Tribe, Poplar, Mont.; Phillip Martin, chairman of the Choctaw Tribal Council, Philadelphia, Miss.; and Mr. Marcus Hendricks, business project manager of the Cherokee Council, Talequah, Okla.

Gentlemen, it is a pleasure to have you before the committee. All of your statements in their entirety will be included in the record.

I would suggest that you proceed in the order that I introduced the panel, unless there is some other agreement among all of you.

After all the statements are made, I think we will then have questions.

Mr. HOLLOW. Mr. Chairman, I think Mr. Martin, being the chairman of our National Tribal Chairmen's Association, should initiate the panel's presentation.

The CHAIRMAN. Fine. Go right ahead. It is nice to have you here, Mr. Martin.

Mr. MARTIN. Thank you, sir.

STATEMENT OF PHILLIP MARTIN, CHIEF, MISSISSIPPI BAND OF CHOCTAW INDIANS, AND PRESIDENT, NATIONAL TRIBAL CHAIRMEN'S ASSOCIATION

Mr. MARTIN. Thank you, Mr. Chairman. It is a pleasure for me to be here.

My name is Phillip Martin, and I am the elected chief of my tribe, the Mississippi Band of Choctaw Indians, a federally recognized tribe of nearly 5,000 located in east central Mississippi, as well as the current president of the National Tribal Chairmen's Association.

The National Tribal Chairmen's Association, known as NTCA, has approximately 160 members who are tribal chairmen.

I am here to represent my tribe based on our experience with industrial development, as well as the NTCA.

Not too long ago, April 29, 1982, we made a statement before the Senate Select Committee on Indian Affairs, a joint statement from the National Congress of American Indians, the Council of Energy Resource Tribes, and NTCA, on the problems relating to economic development on Indian reservations.

At that time, we also highlighted some problems relative to SBA. At that hearing, we gave a whole wide range of recommendations on how we could deal with economics on Indian reservations, and I am glad to see today that this is a big step forward in trying to obtain those goals.

It is encouraging that we have this hearing because, if SBA was born in 1958, that is well over 20 years that the American Indian tribes have been left out of this program.

As you know, the program administered by the agency, for the most part, has been unavailable to Indian tribes, because Indian tribes operate under the jurisdiction of a tribal constitution and bylaws and are not chartered through the State charter process, and SBA cites ownership and control as a major problem in providing assistance to tribal enterprises.

We think that that has been in error all along because tribal enterprises, although not individually owned, are established for the purpose of developing economics and creating jobs and lifting people out of poverty. Some things I am hearing this afternoon about requirements, I think there might be a little detriment there if it is not expanded a little bit.

I think when you are dealing with tribal government, you are dealing with a government rather than individual enterprise, and usually a tribal enterprise is primarily interested in creating jobs and also making a profit doing so.

As an example, in our tribe, we have three businesses on the reservation. One is a construction company, one of them is a wire harness assembly plant, and the third is a greeting cards operation. Two of those businesses could utilize SBA 8(a), but even without it, we consider that we have a very successful program. From these three industries, we have created over 500 jobs, private sector jobs.

I think if we had 8(a) designation we could even expand that to two-fold that particular number, if we could do direct contracting with BIA, Indian Health Service, and the Department of Defense.

These businesses being operated as shoestring businesses. We are doing business with General Motors. We are a dedicated supplier of wire harnesses to Packard Electric, which is a division of General Motors. From that particular business, we have 200 people employed assembling wire harnesses for pickup trucks and Le Sabre Buicks. From 3 years of successful experience, we are expanding that operation, going from a dedicated supplier to competing in the open market in the private sector. We will be expanding into another 40,000-square-foot building, and when in operation this fall, we will eventually have an additional 200 jobs for people on the reservation.

Tribes today have reevaluated their economic position because of the cutbacks that are going on in government. We have begun to realize—we knew this a long time ago—that we are going to have to build our economic base and reduce the welfare programs, reduce dependency on government that we have long known.

I think we can develop the expertise. We can deal with private business. We have proven it now, and I think all we need is some more help such as this kind of amendment to the SBA legislation. It is not going to cost anybody any money to make this amendment. There is not going to be additional money to anybody. We are going to participate in programs already established to provide assistance to tribally owned enterprises.

I am here primarily to support Senator Andrews' bill, S. 1022, and recommend to the committee that the Small Business Act be amended to include language which would permit tribally owned firms to be eligible for the 8(a) program.

I am pleased that SBA has developed an administration policy change, but I don't think most tribes are aware of that policy change and what it means. To avoid policy misinterpretation and confusion, I support and recommend passage of S. 1022. Senate bill 1022 is the most direct way to expand tribal access to the open market and provide Indian tribes an opportunity to grow economically and to create much-needed jobs on the reservation.

Thank you very much.

[The prepared statement of Mr. Martin follows:]

21-034 O - 83 - 4

WRITTEN TESTIMONY

on

SMALL BUSINESS ADMINISTRATION

Submitted to:

UNITED STATES SENATE

COMMITTEE ON SMALL BUSINESS

by:

PHILLIP MARTIN, CHIEF

MISSISSIPPI BAND OF CHOCTAW INDIANS
and
PRESIDENT, NATIONAL TRIBAL CHAIRMAN'S ASSOCIATION
ROUTE 7 BOX 21
PHILADELPHIA MS 39350

MAY 11, 1993

BEST COPY AVAILABLE

My name is Phillip Martin, and I am the elected Chief of the Mississippi Band of Choctaw Indians, a federally-recognized tribe of some 4,800 members in east central Mississippi, as well as the current President of th National Tribal Chairmen's Association.

When it came to my attention that a hearing was being held on Senate Bill 1022, to amend section 8(a) of the Small Business Act to treat businesses owned by Indian Tribes as socially and economically disadvantaged small business concerns, I immediately made plans to be here to represent my tribe and the member tribes of the National Tribal Chairmen's Association.

I testified before the Senate Select Committee on Indian Affairs April 29, 1992 along with representatives from the National Congress of American Indians and the Council of Energy Resource Tribes. In that joint statement the committee was apprised of the problems facing Indian tribal participation in programs administered by the Small Business Administration.

The Small Business Administration administers a number of programs to assist small and, in particular, minority business firms. The programs administered by this agency are for the most part unavailable to Indian tribes, because Indian tribes operate under the jurisdiction of tribal Constitution and Bylaws and are not chartered through the state chartering process, and SBA sites ownership and control as a major problem in providing assistance to tribal enterprises. The Small Business Administration's Small Business Set-Aside Program 3(a), Small Business Investment Company Program and

BEST COPY AVAILABLE

local develpoment company program could provide many benefits, of a private sector nature, to Indian tribal governments. However, tribal governments will not benefit through the Small Business Administration programs, unless there is congressional involvement to amend the regulations of the Small Business Act of 1958.

Tribal units of government have been authorized by Congress and the Secretary of Interior, under Section 16 and 17 of the Indian Reorganization Act of 1934, to establish and govern tribal business entities. Federally recognized tribes which have created business entities under state chartered enabling authority have been subjected to state government jurisdiction. A tribal business chartered through state government represents the waiver of tribal sovereign immunity.

The Small Business Act legislation of 1958 is specifically designed for use by state chartered business concerns. Tribal governments and tribal economies cannot function with state governments superimposed over them.

I would like to express appreciation to Senator Mark Andrews and others for Senate Bill 1022, which is specifically designed to permit tribal access to the 8(a) program. From a short range standpoint, the 8(a) set-aside program would provide immediate benefit to tribal economic development programs. Tribes possessing manufacturing capabilities and construction capabilities are now excluded by SBA from the 8(a) program because ownership and control of tribal business is not identifiable.

I disagree with the Small Business Administration regarding the issue of ownership and control, and so do financial institutions,

BEST COPY AVAILABLE

and industrialists. Bankers and business people are concerned with security and accountability. Trust land or the leasing of trust land is contrary to the concept of land ownership. The financial institution is concerned with security and collateral. The industrialist is concerned with accountability and profitability. Both the banker and the businessman prefer to do business with stable tribal government for reasons of ownership and control.

Since 1979, my tribe has developed two industries which employ more than 500 persons, 80 per cent of those employed are Choctaw tribal members. We are in the process of finalizing construction on a new industry which will employ an additional 200 people. Each Choctaw tribal industry is managed by a 7-member board of directors, and all directors are tribal members. We have developed a track record with financial institutions and industrialists for possessing ownership and control.

The industries that are located on our reservation manufacture products for notable blue chip corporations such as General Motors, American Greetings Corporation, and we will soon be a supplier for Ford Motor Company.

Inspite of our success, we still have a high rate of unemployment. Participation in the 8(a) program is important if tribal private sector development is going to be achieved. Many new jobs would be generated if our new electronic cable assembly plant expansion and tribal construction company were allowed to participte in the set-aside program. An 8(a) designation would place Choctaw tribal industries and other tribal industries in a stronger position

BEST COPY AVAILABLE

to do business with the Bureau of Indian Affairs, Indian Health Services, and Department of Defense.

We have had the opportunity to contract with other blue chip corporations but were unable to do so because we could not be certified as an 8(a) designated firm. Two years ago we submitted an 8(a) application on our electronics wire harness cable assembly plant to our SBA area office, Minority Small Business Director, and two years later we have not received written notification concerning the status of our application. I would not be aware of the problems concerning SBA and tribal business had I not visited the national SBA office. If our tribal enterprises had 8(a) designations we could reduce our rate of tribal unemployment through additional volume provided by set-aside contracts. This example holds true for many tribes.

From a long-range standpoint, congressional action should be taken to permit tribal governments access to the Small Business Investment Company program, and local development company program. Individually owned tribally chartered businesses should be recognized and admitted into the 8(a) program, and they should also be eligible for small business assistance. Immediate Congressional action on the 8(a) program is important to tribal governments, but we also need to develop balanced economic solutions to the problems being faced by tribal communities. Let us consider the positive economic benefits that could be provided to Indian tribes by the other SBA programs.

I am in support of the distinguished Senator's bill and would recommend to this committee that the Small Business Act of 1953 be

BEST COPY AVAILABLE

amended to include specific language to permit tribally-owned firms to be eligible for the 8(a) program. I am pleased that SBA has developed an administrative policy change but I am not aware of the details of the policy change. To avoid policy misinterpretation and confusion, I support and recommend passage of S. 1022. Senate Bill 1022 is the most direct way to expand tribal access to the open market, and provide Indian tribes with an opportunity to grow economically and create much needed reservation employment.

Thank you.

Phillip Martin

The CHAIRMAN. Thank you very much, Mr. Martin.
Mr. Hollow, please proceed.

STATEMENT OF NORMAN HOLLOW, CHAIRMAN, ASSINIBOINE AND SIOUX TRIBES OF THE FORT PECK INDIAN RESERVATION, MONTANA

Mr. HOLLOW. Mr. Chairman, members of the committee. My name is Norman Hollow. I am chairman of the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation. I deeply appreciate the opportunity to present the views of my tribe to the committee in support of S. 1022.

S. 1022 would amend section 8(a) of the Small Business Act to assure that small businesses at least 51 percent controlled by Indian tribes or by tribal members are eligible for the same SBA benefits as are presently available to socially and economically disadvantaged individuals.

My tribes chartered the first Indian corporation and created the first Indian enterprise to perform services for the Defense Department under section 8(a). The results have been remarkable. Before section 8(a) came to the reservation, we had over 40 percent unemployment in the summer and 55 percent in the winter. A majority of the families had incomes of less than $3,000 per year. Almost 75 percent of our people were receiving some form of public assistance.

The section 8(a) program has had the single most important effect on reservation life. The program has meant jobs for Indians. There is no substitute for jobs. To the individual Indian wage earner, jobs mean restored pride and dignity, a general sense of well-being, and improvement in family life.

BEST COPY AVAILABLE

To local businesses, jobs mean a huge boost in the local economy—sales of furniture, appliances, gas, home improvements, the things that all Americans want. Savings in local banks went up.

To the United States and local governments, jobs resulted in dramatic reductions in the moneys expended for public assistance.

In late 1974, the tribes created A&S Tribal Industries, a corporation wholly owned by the tribes. The corporation received a section 8(a) contract to manufacture components for camouflage for the U.S. Army. Production was underway in February 1975, and by October 1975, the plant employed 160 people. Presently there are 304 people employed by this company.

That went a good way toward reducing the unemployment problem. The spokesman for the Denver Regional Office of SBA described our operation as "one of the most outstanding SBA operations in our region."

The plant had not been long in operation when SBA initiated a series of events that have kept us in a state of worry and uncertainty ever since. In February 1975, SBA's Denver Regional Counsel issued an opinion holding that corporations chartered by Indian tribes are not eligible for SBA assistance, only corporations chartered under State law.

On appeal to the Administrator, SBA's General Counsel agreed with his regional counsel and ruled that the tribal corporation must be organized under State law. The SBA promptly notified our bank in Poplar, Mont., that SBA would not continue to guarantee our loan required to expand our facilities and to provide operating funds. That was SBA's first shot at tribal industry.

The ruling was wrong. With the aid of our Senators, the SBA Administrator rejected the advice of his General Counsel and directed that the tribes be informed that tribal corporations would be recognized by SBA. But in delivering that message, the Assistant General Counsel, in a letter dated July 30, 1976, went beyond the Administrator's directive and volunteered the view that if tribes have the authority to create corporations, they must be governments, and since they are governments, they are ineligible for SBA-guaranteed loans regardless of whether the corporation was created by a tribe or under State law.

That was SBA's second shot at tribal industry. Without the SBA guarantee, there would be no loans for tribal corporations. It took an act of Congress in 1978 to cure this effort to eliminate Indian tribes from the SBA program. The 1978 amendment redefined "Indian tribe" to include any recognized tribe that owns and controls 100 percent of a small business concern.

A year later, in 1979, the plant was expanded by 13,500 square feet. General John Sterling of the Defense Department stated publicly: "We are very pleased with the performance here." About that time, the SBA announced its third shot at our tribal industry, when it informed us that it intended to terminate participation in the section 8(a) program because the tribes owned two section 8(a) corporations—one a small electronics company.

SBA gave the tribes 30 days to choose between the corporations. We offered to consolidate the two corporations into one corporation with two divisions. SBA would not agree. We had no choice but to withdraw the smaller corporation from SBA participation.

In May 1981, the tribes undertook a further expansion of the industrial plant to permit the manufacture of additional products. The total cost was $5.6 million. The tribes put up $2.25 million, asked SBA for a $750,000 grant, and borrowed the balance. The expansion added an additional 30,000 square feet and 25 mechanical and hydraulic presses.

By this time, our payroll was $15,000 per week, and we had 140 employees. The Defense Department continued highly pleased with the quality and timeliness of our production and gave us a contract for the manufacture of metal medical chests.

At this point, we thought that at last we were at peace with SBA. SBA had determined the tribal corporation to be eligible and had approved the management program between the corporation and Brunswick Corp.

Unexpectedly, we learned that a California company was urging SBA to terminate the 8(a) contracts with the tribes' corporation on the ground that the corporation's management and daily operations were not controlled by socially and economically disadvantaged individuals.

On demand of the Comptroller General, SBA reviewed the eligibility of the tribal corporation under a 1978 amendment that defined a "socially and economically disadvantaged small business concern" to be one that is at least 51 percent owned by one or more "socially and economically disadvantaged individuals."

SBA concluded that the corporation was a small business concern but that it was not eligible because the tribes, and not any individual, owned the corporation and because management was not in the hands of a socially and economically disadvantaged individual. Then followed SBA's fourth shot at our tribal industry.

In early 1982, the Denver Regional Office of SBA announced that the tribal corporation was not eligible for contracts. To correct this harsh ruling, Senator Andrews, joined by Senators Melcher, Baucus, Burdick, and Cochran, in July 1982, introduced a bill, S. 2702, much the same as S. 1022, now before you. At the same time, appeals were taken to the Administrator of SBA. The Administrator, in effect, reversed the Denver office and the pending contracts with the corporation were confirmed subject to conditions.

No business can be successfully operated subject to a superpower that seemingly is quick to invoke strained interpretations of law and regulations to deny participation in a program created by the broad, remedial Small Business Act. At least four times, SBA has put our business and the livelihoods of over 300 people at risk.

The bill before you, if enacted, would remove the tribes from the jeopardy of administrative whim by making plain the intent of Congress that Indian tribes be put in a position to serve their people.

One thing is certain. The benefits of the business go to socially and economically disadvantaged individuals. There is no other minority group in the country as far down the economic ladder as the reservation Indians. Reservation Indians, as part of their way of life, look to their tribes to work for them. Reservation Indians rely on their tribal governments and their tribal leaders to bring to them the benefits afforded by law.

21-034 O - 83 - 5

Frankly, we are tired of being harassed by what seems to be an unending issuance of rulings and interpretations, all designed to put the tribes out of business, to take away the jobs, to put the people back on general assistance, to leave the tribes high and dry with millions invested in plant facilities and machinery, and with huge debts still due on those facilities.

We urge the committee to favorably report this bill. We urge that it be moved to enactment so that we can devote our energies to our work and not have to worry that the Government we look to for support may at any moment place our livelihood and our way of life in danger.

Thank you very much.

[The prepared statement of Mr. Hollow follows:]

Statement of

NORMAN HOLLOW, CHAIRMAN
Assiniboine and Sioux Tribes of the
Fort Peck Indian Reservation, Montana

Before the
Senate Select Committee on Small Business

On

S. 1022

May 11, 1983

Mr. Chairman and members of the Committee, my name is Norman Hollow. I am Chairman of the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana. I deeply appreciate the invitation to present the views of my Tribe to the Committee in support of S. 1022.

S. 1022 would amend Section 8(a) of the Small Business Act to assure that small businesses, at least 51% controlled by Indian tribes or by tribal members are eligible for the same SBA benefits as are presently available to socially and economically disadvantaged individuals.

My Tribes chartered the first Indian corporation and created the first Indian enterprise to perform services for the Defense Department under Section 8(a). The results have been remarkable. Before Section 8(a) came to the Reservation we had over 40% unemployment in the summer and 55% in the winter. A majority of the families had incomes of less than $3000

per year. Almost 75% of our people were receiving some form of public assistance. The Section 8(a) program has had the single most important effect on Reservation life. The program has meant jobs for Indians. There is no substitute for jobs. To the individual Indian wage-earner, jobs mean restored pride and dignity, a general sense of well-being and improvement in family life. To local businesses jobs mean a huge boost in the local economy -- sales of furniture, appliances, cars, home improvements -- the things that all Americans want. Savings in local banks went up. To the United States and local governments, jobs resulted in dramatic reductions in the moneys expended for public assistance.

In late 1974 the Tribes created A&S Tribal Industries, a corporation wholly owned by the Tribes. The corporation received a Section 8(a) contract to manufacture components for camouflage for the U.S. Army. Production was underway in February 1975 and by October 1975 the plant employed 160 people -- that went a good way towards reducing the unemployment problem. The spokesman for the Denver Regional Office of SBA described our operation as "one of the most outstanding" SBA operations "in our region".

The plant had not been long in operation when SBA initiated a series of events that have kept us in a state of worry and uncertainty ever since. In February 1975 SBA's Denver Regional Counsel issued an opinion holding that corporations chartered by Indian tribes are not eligible for SBA assistance,

BEST COPY AVAILABLE

only corporations chartered under State law. On appeal to the Administrator, SBA's General Counsel agreed with his regional counsel and ruled that the tribal corporation must be organized under State law. The SBA promptly notified our bank in Poplar, Montana, that SBA would not continue to guarantee our loan required to expand the facility and to provide operating funds. That was SBA's first shot at tribal industry.

The ruling was wrong. With the aid of our Senators, the SBA Administrator rejected the advice of his General Counsel and directed that the Tribes be informed that tribal corporations would be recognized by SBA But in delivering that message the Assistant General Counsel in a letter dated July 30, 1976, went beyond the Administrator's directive and volunteered the view that if tribes have the authority to create corporations, they must be governments, and since they are governments they are ineligible for SBA guaranteed loans regardless of whether the corporation was created by a tribe or under State law. That was SBA's second shot at tribal industry. Without the SBA guarantee there would be no loans for tribal corporations. It took an Act of Congress in 1978 to cure this effort to eliminate Indian tribes from the SBA program. The 1978 amendment redefined "Indian tribe" to include any recognized tribe that owns and controls 100% of a small business concern. (15 U.S.C. 632(d).)

BEST COPY AVAILABLE

A year later, in 1979, the plant was expanded by 13,500 square feet. General John Sterling of the Defense Department stated publicly: "We are very pleased with the performance here". About that time SBA announced its third shot at our tribal industry, when it informed us that it intended to terminate participation in the Section 8(a) program because the Tribes owned two Section 8(a) corporations -- one a small electronics company. SBA gave the Tribes 30 days to choose between the corporations. We offered to consolidate the two corporations into one corporation with two divisions. SBA would not agree. We had no choice but to withdraw the smaller corporation from SBA participation.

In May 1981 the Tribes undertook a further expansion of the industrial plant to permit the manufacture of additional products. The total cost was $5.6 million. The Tribes put up $2.25 million, asked SBA for a $750,000 grant and borrowed the balance. The expansion added an additional 30,000 square feet and 25 mechanical and hydraulic presses. By this time our payroll was $15,000 per week and we had 140 employees. The Defense Department continued highly pleased with the quality and timeliness of our production and gave us a contract for the manufacture of metal medical chests.

At this point we thought that at last we were at peace with SBA. SBA had determined the tribal corporation to be eligible and had approved the management program between the corporation and Brunswick Corporation.

BEST COPY AVAILABLE

Unexpectedly, we learned that a California company was urging SBA to terminate the 8(a) contracts with the Tribes' corporation on the ground that the corporation's management and daily operations were not controlled by socially and economically disadvantaged individuals. On demand of the Comptroller General, SBA reviewed the eligibility of the tribal corporation under a 1978 amendment that defined a "socially and economically disadvantaged small business concern" to be one that is at least 51% owned by one or more "socially and economically disadvantaged individuals". (15 U.S.C. 637(a)(4).) SBA concluded that the corporation was a small business concern but that it was not eligible because the Tribes, not any individual, owned the corporation and because management was not in the hands of a socially and economically disadvantaged individual. Then followed SBA's fourth shot at our tribal industry.

In early 1982 the Denver Regional Office of SBA announced that the tribal corporation was not eligible for contracts. To correct this harsh ruling Senator Andrews, joined by Senators Melcher, Baucus, Burdick and Cochran, in July 1982, introduced a bill (S. 2702) much the same as S. 1022, now before you. At the same time appeals were taken to the Administrator of SBA. The Administrator, in effect, reversed the Denver office and the pending contracts with the corporation were confirmed subject to conditions.

No business can be successfully operated subject to a super-power that seemingly is quick to invoke strained interpretations of law and regulations to deny participation in a program created by the broad, remedial Small Business Act. At least four times SBA has put our business and the livelihoods of 300 people at risk. The bill before you, if enacted, would remove the Tribes from the jeopardy of administrative whim by making plain the intent of Congress that Indian tribes be put in a position to serve their people. One thing is certain. The benefits of the business go to socially and economically disadvantaged individuals. There is no other minority group in the country as far down the economic ladder as reservation Indians. Reservation Indians, as part of their way of life, look to their tribes to work for them. Reservation Indians rely on their tribal governments and their tribal leaders to bring to them the benefits afforded by the law.

Frankly we are tired of being harrassed by what seems to be an unending issuance of rulings and interpretations, all designed to put the tribes out of business -- to take away the jobs -- to put the people back on general assistance -- to leave the tribes high and dry with millions invested in plant facilities and machinery -- and with huge debts still due on those facilities.

BEST COPY AVAILABLE

We urge the Committee to favorably report this bill. We urge that it be moved to enactment so that we can devote our energies to our work and not have to worry that the Government we look to for support may at any moment place our livelihood and way of life in danger.

The CHAIRMAN. Thank you very much, Mr. Hollow.

I notice that Senators Melcher and Baucus from Montana have joined us. I know they will want the opportunity to address themselves to you and the subject matter.

We have also been joined by Senator Nickles from Oklahoma, who will be introducing Mr. Hendricks.

At this time the Chair would recognize first the distinguished member of the committee, Senator Baucus, who might have a comment for Mr. Hollow. I am sure he would like to introduce his colleague from Montana who, after he gets through making any comments, is welcome to join the committee.

Senator BAUCUS. Thank you, Mr. Chairman.

Actually, Mr. Chairman, at this point, I would ask my colleague from Montana, Senator Melcher, if he wishes to make a statement. I am going to make a statement now, John, and it is up to you whether you want to go first.

Senator MELCHER. You may go ahead.

Senator BAUCUS. All right.

STATEMENT OF HON. MAX BAUCUS, A U.S. SENATOR FROM THE STATE OF MONTANA

Senator BAUCUS. Mr. Chairman, you have heard the statement from Mr. Hollow. I want to tell this committee of my strong friendship and admiration for Norman.

Mr. Chairman, Mr. Hollow, as you can tell from his testimony, has a deep, very involved, and long-lasting experience with tribal council matters. He also has extensive experience with SBA, and the Bureau of Indian Affairs within the Department of the Interior and is trying to get his tribe off and moving in a very noteworthy way.

He was elected as chairman of his tribe in 1945. That is 38 years ago. He has very deep, long-lasting experience. He helped draft the constitution for the Sioux and Assiniboine Tribes. He is very steeped in judicial and jurisprudential matters and governmental theory as well as practical experience with A&S Industries.

He has also been honored by the Department of the Interior. Just last August in Billings, Mont., he was so honored by the Department.

I am very honored to have you here with us, Norman. We are very, very proud of what you have done and the enterprising and entrepreneurial way in which you have developed and worked with A&S Industries and other operations with the tribe.

I just want to thank you for what you have done, and I am glad you are carrying the word here to Washington with what you have

BEST COPY AVAILABLE

done. I want you to know that Senator Melcher and I and others are going to do all we can to make sure that section 8[a] is amended so that not only individuals but tribes can compete with the minority set-aside program.

I think it is critical because, as we all know, sometimes rules should not be slaves in their application. Sometimes there can be exceptions. This certainly is a case with respect to tribal matters and that tribes themselves should be able to compete, just as individuals, for these minority set-asides.

I thank you very, very much.

Mr. HOLLOW. Thank you.

Senator BAUCUS. Thank you, Mr. Chairman.

The CHAIRMAN. Senator, thanks very much.

Senator Melcher, do you have a comment to make here?

STATEMENT OF HON. JOHN MELCHER, A U.S. SENATOR FROM THE STATE OF MONTANA

Senator MELCHER. Thank you, Mr. Chairman.

I want to sit beside my brother Sioux here, Norman Hollow.

We are going to brag about him a little bit. I also recognize Phil Martin, too, chairman of the Mississippi Band of Choctaws, and Rex Moore. Let's see, I forgot what tribe you were from.

Mr. MOORE. Sioux in Devils Lake, N. Dak.

Senator MELCHER. Is he a brother, too, Norman?

Mr. HOLLOW. Yes, that is right.

Senator MELCHER. All right. And Marcus Hendricks from the Cherokee.

Mr. HENDRICKS. How are you?

Senator MELCHER. We have to do a little bit of bragging about Norman, as Senator Baucus has indicated. It is pretty remarkable for a member of the Sioux part of the Fort Peck tribes to be on the council and to be chairman as long as Norman has. Since the Sioux are in the minority, the Assiniboine have not just a majority on Fort Peck; they have a substantial majority.

Norman's work has been recognized not only on the reservation and not just on Indian matters. He has been an active supporter of education. Norman has not only served on the local school board there but has been a lecturer at Eastern Montana College and the University of Montana, and that says something for Norman's ability.

Now, I have spent a little time at the A&S Industries—that stands for Assiniboine and Sioux—at Poplar on the Fort Peck Reservation. Norman, I didn't say too much there, but I was very pleased with the attitude and excellent morale of the workers. They get to work on time, they work hard, they like it, they like what they are doing. They are making camouflage material, and are very adept at that. They also make medical chests and food containers for the Department of Defense.

But I want to say this, that when you can provide 300 jobs—sometimes it is 325; sometimes it is 350—at Poplar, Montana, and be the largest employer in Roosevelt County—and we only have 56 counties in the State—that is a sucess story all in itself.

A&S Industries has been a success story since 1975. We think it is going to continue to be a success story in the future. Norman, congratulations to you, and congratulations to all of the council and all of the members of the Fort Peck tribes. You are doing a good job. We are proud of you.

The CHAIRMAN. Thank you very much, Senator Melcher.

If you would like to, you are more than welcome to join us up here.

Senator MELCHER. Thank you very much, Mr. Chairman, but I have another appointment. I will submit some brief testimony I have about A&S Industries.

The CHAIRMAN. Your testimony will be included in the record at this point.

[The prepared statement of Senator Melcher follows:]

STATEMENT OF SENATOR JOHN MELCHER UPON INTRODUCTION
OF S. 1022

I AM PLEASED TO JOIN MY COLLEAGUE FROM NORTH DAKOTA, SENATOR ANDREWS, AS COSPONSOR OF THE BILL S. 1022, TO INSURE THAT INDIAN TRIBAL BUSINESSES ARE TREATED AS MINORITY ENTERPRISES BY THE SMALL BUSINESS ADMINISTRATION.

IN 1974, THE ASSINIBOINE AND SIOUX TRIBES OF THE FORT PECK RESERVATION IN MONTANA ESTABLISHED A & S INDUSTRIES, A WHOLLY OWNED TRIBAL BUSINESS. A & S IS A DYNAMIC EXAMPLE OF THE POSITIVE BENEFITS OF THE 8(A) PROGRAM. WITH THE AID OF 8(A), THE BUSINESS WAS ABLE TO CONTRACT WITH THE DEPARTMENT OF DEFENSE FOR SALE OF CAMOUFLAGE EQUIPMENT AND DEEP DRAW METAL-FORMED CHESTS. THE NUMBER OF EMPLOYEES HAS GONE FROM 27 IN 1975 TO OVER 280 PEOPLE, MOST OF WHOM ARE INDIAN. A & S IS ALSO MOVING INTO COMPETITIVE MARKETS FOR ITS PRODUCTS WHERE THERE IS A DEMAND FOR CAMOUFLAGE SCREENS BY PHOTOGRAPHERS AND HUNTERS. A & S IS CLEARLY A SUCCESS STORY THAT WOULD NOT HAVE HAPPENED BUT FOR THE 8(A) PROGRAM.

THE 8(A) PROGRAM IS NOT A MAKEWORK PROGRAM BUT A PROGRAM THAT PUTS INDIAN PEOPLE TO WORK IN STABLE, PRODUCTIVE JOBS. THE OBVIOUS SIDE EFFECTS ARE THE ECONOMIC ENHANCEMENT OF THE RESERVATION ITSELF.

BEST COPY AVAILABLE

THE PRIDE AND SELF-ESTEEEM THAT COME FROM A STEADY PAYCHECK AND PRODUCING A GOOD PRODUCT ARE HARD TO MEASURE BUT A & S INDUSTRIES IS PROOF THAT PRIDE AND SELF-ESTEEM ARE ACHIEVABLE GOALS ON INDIAN RESERVATIONS. THE 8(A) PROGRAM IS VITAL IF THE A & S STORY IS TO BE REPEATED ON OTHER ECONOMICALLY DEPRESSED INDIAN RESERVATIONS THROUGHOUT THIS COUNTRY.

The CHAIRMAN. Now, my good friend, Senator Nickles. Senator, why don't you make any comments you choose to, and then we will leave it to you to introduce Mr. Hendricks as the next witness.

STATEMENT OF HON. DON NICKLES, A U.S. SENATOR FROM THE STATE OF OKLAHOMA

Senator NICKLES. Thank you very much, Mr. Chairman.

Again, I will compliment you for holding this hearing and compliment Senator Andrews and the other cosponsors. I will include myself in that as a consponsor of this legislation that will allow Indian tribes to be eligible for the 8(a) program.

I think this legislation will be a step in the right direction. When I questioned my staff as to whether or not it was needed, I was surprised to find that we have had conflicting rulings at different times in the past from SBA as to whether or not tribally owned firms would qualify. This legislation, at least, would eliminate that disparity in rulings.

Hopefully, it will pass; hopefully, it will pass in a very short period of time so we can have more tribal participation in 8(a) contracts. We can help Indian tribes and Indian people who, in Oklahoma, probably are the most socially and economically disadvantaged in our State.

Mr. Chairman, the State of Oklahoma has something like, I guess, about the second largest Indian population in the Nation. We have over 40 different tribes, some small tribes, some large tribes. I think this legislation would certainly be advantageous to all those tribes to allow them to be able to participate in 8(a) contracts which were supposedly set up to help those persons that are socially and economically disadvantaged.

I am pleased that we have Mr. Marcus Hendricks, the business project manager from the Cherokee Nation, Talequah, Okla. as a witness. The Cherokee Nation, incidentally, happens to be very progressive, a tribe that is working diligently and, I would say, successfully, in moving toward improving the quality of life of its citizens. They have a way to go. So do we as people and elected representatives in enabling them to pull themselves up by the bootstraps, so to speak; be able to lift themselves up economically and socially, too.

So I am hopeful that we will pass this legislation.

BEST COPY AVAILABLE

Again, I thank Mr. Hendricks for coming from Oklahoma to present a statement. I am going to stay and listen to your testimony, so again, thank you for coming and thank you, Mr. Chairman, for scheduling the hearing. Hopefully, we will be able to move this forward in an expeditious manner.

[The prepared statement of Senator Nickles follows:]

STATEMENT OF SENATOR DON NICKLES ON S. 1022, A BILL TO CLARIFY THE ELIGIBILITY OF TRIBALLY OWNED FIRMS TO PARTICIPATE IN SECTION 8(a) OF THE SMALL BUSINESS ACT

Mr. Chairman, I want to thank you for scheduling this hearing on S. 1022, legislation to clarify the intent of Congress to include tribally-owned firms under section 8(a) of the Small Business Act. I am pleased to cosponsor, along with fifteen other colleagues, this bill introduced by Mr. Andrews to prevent any future problems concerning the eligibility of tribally-owned firms under the 8 (a) program.

The State of Oklahoma has the second largest Indian population in the nation. Forty separate tribal groups number from about 100 to over 30,000 members. These people continue to be the most socially and economically disadvantaged citizens in the State. At present, there are no 8 (a) contracts among the Indian tribes in Oklahoma. Passage of this legislation should help facilitate their participation in this program.

The 1978 amendments to the Small Business Investment Act of 1958 came about in an attempt to strengthen the management of the program to make certain that minorities were receiving the benefits. I am certain that the late Dewey F. Bartlett, then Senator from Oklahoma serving on both the Small Business and Indian Affairs committees, had the pressing needs of the Oklahoma tribes very much in mind when he said that "the program was 'a failure' in its overall goal of expanding the ownership of productive capital among groups that have almost none."

I commend Mr. Andrews for initiating this legislation which is one more small step towards the goal of self-determination for the Indian people which can only be achieved through economic independence.

Mr. Chairman, I would urge quick consideration and mark-up of this bill by the committee in order to expedite enactment on the floor of the Senate.

HEARING, SMALL BUSINESS COMMITTEE WEDNESDAY, MAY 11, 1983

BEST COPY AVAILABLE

The CHAIRMAN. Thank you, Senator.
Mr. Hendricks.

STATEMENT OF MARCUS HENDRICKS, BUSINESS PROJECT MANAGER, CHEROKEE NATION OF OKLAHOMA

Mr. HENDRICKS. Mr. Chairman and members of the committee, the Cherokee Nation of Oklahoma is pleased to submit testimony on the Small Business Administration's 8(a) program.

The Cherokee Nation of Oklahoma is a nonreservation, federally recognized Indian tribe located in and around 14 counties of northeastern Oklahoma.

The Cherokee Nation is responsible for delivering services to approximately 50,000 Cherokees in that area. Latest statistics indicate that of the 77 counties in Oklahoma, 29 have unemployment figures above the national average. Now, 17 of these counties are located in northeastern Oklahoma.

Latest statistics also show that the average per capita real income for the Indian population is less than $3,100 per year.

Needless to say, the Cherokee Nation is very much concerned with the economic conditions affecting its people. Millions of dollars are appropriated each year into this area, most of which is administered by the Cherokee Nation. Now, these funds are used for employment, health, education, and social services assistance.

Public Law 93-368, Indian Self-Determination Act of 1975, enabled the Cherokee Nation to develop a sound tribal government in order to achieve goals of self-sufficiency. In addition to managing Federal assistance programs, the Cherokee Nation is developing business enterprises to strengthen the tribe's economic base.

The idea that Indian tribes are eligible for the 8(a) program is encouraging, especially if the businesses are owned or controlled by the Cherokee Nation.

The opinion offered by General Counsel of the SBA indicates that much research was conducted on Indian tribes regarding their status and relationship with the Federal Government. S. 1022, introduced by Senator Andrews, is supported by the Cherokee Nation.

The 8(a) program poses a great opportunity for the Cherokee Nation in getting a "leg up," so to speak, on business enterprises, especially those offering goods and services to the Federal Government.

The 8(a) program can provide an opportunity to gain valuable experience in developing a business, especially where technical services are concerned, these services being in the areas of engineering, research and development, and contract compliance.

However, if tribes are deemed eligible for the 8(a) program, there appears to be little or no guidelines for implementation, as evidenced here with other testimony. There is no question that guidelines are clear for individual Indians to participate in the 8(a) program, but not much for Indian tribes as a whole.

The General Counsel's opinion does not specify how Indian tribes can become eligible; it only states that "qualified Indian tribes" may be eligible.

Therefore, we suggest that the definition of Indian tribes must stay consistent with that of the Bureau of Indian Affairs or any other agency who will be working with this committee. Also, it appears that the rules of eligibility for individuals may not be applicable as they are for individuals and for tribes.

We would suggest a review; that special guidelines, if possible, be set up and established to clarify the rules for eligibility for Indian tribes.

The Cherokee Nation supports the concept and the spirit of the 8(a) program and stands ready to assist in any capacity to develop a successful, meaningful 8(a) program for Indian tribes.

[The prepared statement of Mr. Hendricks follows:]

CHEROKEE NATION

P.O. Box 948 • Tahlequah, Okla. 74464 • (918) 456-0671

Ross O. Swimmer
Principal Chief

R. Perry Wheeler
Deputy Chief

TESTIMONY

SUBMITTED BY

MARCUS HENDRICKS
BUSINESS PROJECT MANAGER

CHEROKEE NATION OF OKLAHOMA

May 9, 1983

SENATE SMALL BUSINESS COMMITTEE

Mr. Chairman, members of the Committee, the Cherokee Nation of Oklahoma is pleased to submit testimony on the Small Business Administrations 8 (a) program 15 U.S.C. 637 (a).

INTRODUCTION

The Cherokee Nation of Oklahoma is a non-reservation, federally recognized Indian tribe located in and around fourteen (14) counties of Northeastern Oklahoma.

The Cherokee Nation is responsible for delivering services to approximately 50,000 Cherokees within this area. Latest statistics indicate that of the seventy-seven (77) counties in Oklahoma, twenty-nine (29) have unemployment figures above the national average. Seventeen (17) of these are located in Northeastern Oklahoma. The average per capita income for the Indian population is less than $3,100 per annum.

Needless to say, the Cherokee Nation is very much concerned with the economic conditions effecting its people. Millions of dollars in federal assistance are spent each year, most of which is administered through the tribe, for employment, health, education and social services assistance.

Public Law 93.638, Indian Self-Determination Act of 1975 enabled the Cherokee Nation to develop a sound tribal government in order to achieve goals of self-sufficiency. In addition to managing federal assistance programs, the Cherokee Nation is developing business enterprises to strengthen the tribe's economic base.

8 (a) Program

The idea that indian tribes are eligible for the 8 (a) program is encouraging especially if the businesses are owned or controlled by the tribe.

The opinion offered by the General Counsel of the S.B.A. indicates that much research was conducted on indian tribes regarding their status and relationship with the federal government. S. 1022, introduced by Senator Andrews is supported by the Cherokee Nation.

The 8 (a) program poses a great opportunity for the Cherokee Nation in "getting a leg up" on business enterprises especially those offering goods and services to the federal government.

The 8 (a) program can provide an opportunity to gain valuable experience in developing a business especially where technical services such as engineering, research and development and contract compliance are concerned.

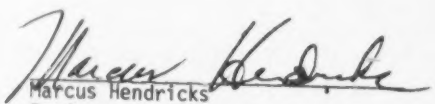
However, if tribes are deemed eligible for the 8 (a) program, there appears to be little or no guidelines for implementation. There is no question that guidelines are clear for individual indians to participate in the 8 (a) program, but nothing for indian tribes.

The General Counsel's opinion does not specify how indian tribes can become eligible, it only states that "qualified indian tribes" may be eligible. Therefore, we suggest that the definition of indian tribes stay consistent with that of the Bureau of Indian Affairs. Also, it appears that the rules of eligibility for individuals may not be applicable

to a tribe. The Senate or S.B.A. may want to consider developing a special set of regulations for indian tribes.

CONCLUSION

The Cherokee Nation supports the concept and spirit of the 8 (a) program and will assist in any capacity to develop a successful, meaningful 8 (a) program for indian tribes.



Marcus Hendricks
Business Projects Manager
Cherokee Nation of Oklahoma

The CHAIRMAN. Mr. Hendricks, thank you very much.

Our last witness is Mr. Rex Moore, president of the Devils Lake Sioux Manufacturing Corp. in Fort Totten, N. Dak.

STATEMENT OF REX MOORE, PRESIDENT, DEVILS LAKE SIOUX MANUFACTURING CORP., FORT TOTTEN, N. DAK.

Mr. MOORE. Thank you, Mr. Chairman.

In addition to being the president of Devils Lake Sioux Manufacturing Corp. and its chief executive officer, I am also a member of the Sisseton clan of the Santee Sioux which composes the Devils Lake Sioux tribe of Fort Totten, N. Dak.

That designation alone is a unique designation; we consider it so. I appreciate the opportunity to submit testimony to your committee on behalf of Senator Andrews. bill, S. 1022.

In addition to that written statement, I would like to make a few brief comments.

Devils Lake Sioux Manufacturing Corp. has always considered itself a vanguard in the 8(a) program as far as the Indian participation goes. Devils Lake Sioux Manufacturing is 10 years old. I have been with the company 10 years. I started as a department manager. I am now its president and chief executive officer, which gives you some indication what business and industry can do for indian people.

This bill is intended to take care of some of the problems of administration of Public Law 95-507. We consider ourselves in the forefront in these problems. As of October 1982, Devils Lake Sioux Manufacturing was in front, worked with and cooperated with the Small Business Administration in working out an arrangement so that we could continue as participants in the 8(a) program.

We did that successfully through negotiations and a lot of hard work, as the gentlemen from SBA can testify. Today, on the question of day-to-day control in our company, there is absolutely no

question as to who is in control. I am in control. I am the Indian that is in control; I will testify to that.

I am here today to support Senator Andrews' bill because, in the future, I would like to see security in that part of the administration and that part of Indians' participation in set-aside programs for Indian business.

I would like to offer also a little bit of statistics as to the value of this program. There has never been any industry in the Devils Lake Sioux Tribe for 120 years. The only movement toward self-determination of my people has been the ownership and the tribal management of one farm. To this day, it has not been fully successful.

Other than that, the management of the Government subsidized program has been the only education or the only direction my people have had. This is the only experience that they offered 10 years ago, when my company started. To this date, we have no people on our reservation in business management, and we have no people on my reservation educated to help manage the business.

Since last October 1982, we have progressed greatly. We have eight people in management positions. I run the company with a committee of two members of the Tribal Council. We hope to improve this situation within the next 2 years.

This year, my company has signed two contracts with the United States Government, Department of Defense, with a total value of $40 million. Our annual payroll is over $5 million. Our profits last year declared dividends of $1 million.

My tribe owns 51 percent of it. Sixty-eight percent of the employees of my company are American Indians and members of my tribe.

I offer these statistics to emphasize the fact that Indians participating in Indian industry with the Government can succeed. We need the support of Government and the understanding of the bureaus that implement the laws.

Thank you.

[The prepared statement of Mr. Moore follows:]

STATEMENT BY

REX MOORE, PRESIDENT, DEVILS LAKE
SIOUX MANUFACTURING CORPORATION

BEFORE THE

SENATE SMALL BUSINESS COMMITTEE

MAY 11, 1983

Mr. Chairman, my name is Rex Moore, President of the Devils Lake Sioux Manufacturing Corporation, Ft. Totten, North Dakota. I respectfully submit this statement on behalf of nearly 3,000 members of the Devils Lake Sioux Tribe.

The Sisseton and Wahpeton Clans of the historical Santee Nation of Dakotahs comprise our present tribe at the Fort Totten Reservation in North Dakota. We have conducted our affairs as the Devils Lake Sioux by virtue of treaties and subsequent trust activities with the United States Government for over 100 years. Our language, culture, and indigenous right to land supports our historical claim to sovereignty as a tribe. It is these characteristics that even separates us from other native people of America. To respond to the needs of our people in a unified tribal manner is natural for us. We do not deny the individual rights of our people but rather secure our basic dominion by inherent tribal responsibilities.

These are the primary reasons that guided us in seeking self-government and finally authority for our constitution and by-laws from the United States Government. It is in this manner we act today. It was this identity that we offered into corporation to participate in business by a joint venture with the Brunswick Corporation. A venture into an industrial activity never known in the history of our people. We originated the Devils Lake Sioux Manu-

facturing corporation.

There has never been any industry on our reservation. The only attempts at self-determination were land acquisition and tribally owned farm. The administration of government social programs are practically the only experience that can be counted in the act of social survival. The innovation of Devils Lake Sioux Mfg. Corp. virtually gave us economic opportunity. The continued financial success of this company afforded us the determination to pursue independence as a people. It affords jobs in jobless areas to give individual dignity to life. It is a realistic experience to give hope for our children.

Consequently, the people of the Devils Lake Sioux Tribe in its successful experience in the 8(a) program, now voice their support of Senate Bill 1022, entered by the Honorable Mark Andrews of North Dakota.

Therefore, I respectfully request, Mr. Chairman, your Committee consider our cause in your deliberations in this matter.

Thank you, Mr. Chairman, for the opportunity to appear here before the Committee. I will be happy to answer any questions.

The CHAIRMAN. Mr. Moore, thank you very much.

I think each of you has very eloquently articulated the reasons for the passage of this legislation.

I have one question, and then I will move to my fellow Senators.

Do all of you feel that if this is passed, there will be a greater number of Indian tribes availing themselves of the 8(a) program?

Mr. MARTIN. Yes. I think the answer would be yes.

I think this would open the doors immediately, as soon as the bill is enacted. I don't know the SBA regulations, but they need to be flexible enough for the unique situation to be taken into account. If we are going to have to operate on a narrow scope, it may not be that beneficial. But we have to have regulation in which we can do business with Government, particularly the Department of Defense. I think it will open the door much more in working with the Department of Defense than either BIA or IHS.

The CHAIRMAN. Thank you very much.

Senator Baucus, any questions?

Senator BAUCUS. I am just curious, Mr. Chairman.

Norman, Mr. Hendricks talked about not only the need for the bill but the guidelines to make sure it is implemented very expeditiously and without undue difficulties. Could you elaborate on that a little bit for us, too? What kinds of guidelines and what directions do you think we should urge upon the SBA, assuming this bill is passed? I think it will be passed; I think there is very, very strong support for it. But after it is passed, I want to make sure that we have taken care of everything we need to take care of so that the goals are reached.

Mr. HOLLOW. Quite often, after legislation is enacted, the various different departments are quite slow in implementing the provisions of the act, and there should be emphasis stressed on the necessity of coming up with regulations as quickly as possible to implement the provisions of the act so that the tribes could take advantage of it. It is very true that quite often this is the case.

Senator BAUCUS. So you think it is primarily a question of time?

Mr. HOLLOW. Right.

Senator BAUCUS. In addition to the question of time, have you any other suggestions or advice to us that we need to urge upon SBA? Do you think that, once the bill is passed and once they act quickly in issuing the guidelines, that is the bulk of the problem?

Mr. HOLLOW. Once the act is passed—and, of course, you know, if they would come up as quickly as possible with the recommended guidelines that they are going to use and make them available to the various tribes for review and comments to see if those are the types of guidelines that they feel that they can operate under—there may be a difference of opinion from tribe to tribe, so the tribes should have an opportunity to express their views on them.

Senator BAUCUS. Well, I suppose the question of time means also that we should pass it quickly, too.

Mr. HOLLOW. Surely.

Senator BAUCUS. I hope, Mr. Chairman, that in a matter of just a couple of weeks, we can get this bill passed.

Anyway, I want to thank you very much, Norman.

The CHAIRMAN. I thank my colleague, and the Chair will certainly move toward that end.

The committee has asked Assistant Secretary Ken Smith of the Department of Interior, Bureau of Indian Affairs, to comment on the bill. His statement will be included in the record, and the hearing record will be kept open for a week for other statements.

[Material follows:]

STATEMENT OF JOHN FRITZ, DEPUTY ASSISTANT SECRETARY, DEPARTMENT OF THE INTERIOR, BEFORE THE COMMITTEE ON SMALL BUSINESS, UNITED STATES SENATE, ON S. 1022, A BILL "TO AMEND SECTION 8(A) OF THE SMALL BUSINESS ACT TO TREAT BUSINESSES OWNED BY INDIAN TRIBES AS SOCIALLY AND ECONOMICALLY DISADVANTAGED SMALL BUSINESS CONCERNS."

SUBMITTED MAY 13, 1983

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, THANK YOU FOR THE OPPORTUNITY TO PRESENT THE VIEWS OF THE DEPARTMENT OF THE INTERIOR ON S. 1022, A BILL TO AMEND SECTION 8(A) OF THE SMALL BUSINESS ACT. WE CONCUR WITH THE SMALL BUSINESS ADMINISTRATION THAT S. 1022 SHOULD BE ENACTED.

S. 1022 WOULD AMEND SECTION 8(A) OF THE SMALL BUSINESS ACT TO SPECIFICALLY INCLUDE INDIAN TRIBALLY-OWNED BUSINESSES AS SOCIALLY AND ECONOMICALLY DISADVANTAGED SMALL BUSINESS CONCERNS. SECTION 8(A) OF THE SMALL BUSINESS ACT PROVIDES SUCH CONCERNS WITH NON-COMPETITIVE ACCESS TO VARIOUS FEDERAL CONTRACTS.

THE SECTION 8(A) SET-ASIDE PROGRAM WAS ESTABLISHED TO HELP THE DISADVANTAGED INCREASE THEIR JOB OPPORTUNITIES AND TO RAISE THEIR INCOME LEVELS. AMONG OTHERS, THREE TRIBAL COMPANIES HAVE SUCCESSFULLY PARTICIPATED IN THE SECTION 8(A) PROGRAM: (1) A & S TRIBAL INDUSTRIES, A BUSINESS OWNED BY THE ASSINIBOINE AND SIOUX TRIBES IN MONTANA, WHICH MANUFACTURES CAMOUFLAGE NETTING AND OTHER EQUIPMENT FOR THE ARMY; (2) DEVILS LAKE SIOUX MANUFACTURING CORP., A BUSINESS OWNED BY THE DEVILS LAKE SIOUX IN NORTH DAKOTA, WHICH ALSO MANUFACTURES CAMOUFLAGE NETTING; AND (3) TURTLE MOUNTAIN MANUFACTURING COMPANY, OWNED BY THE TURTLE MOUNTAIN TRIBE IN NORTH DAKOTA, WHICH HAS A CONTRACT FOR PRODUCING MILITARY-TYPE TRAILERS. IN ADDITION TO PROVIDING EMPLOYMENT FOR OVER 750 INDIANS, THESE COMPANIES HAVE ENHANCED THEIR SURROUNDING RESERVATION ECONOMIES THROUGH INCREASED LEVELS OF BOTH TRIBAL REVENUE AND INDIVIDUAL INCOME.

BEST COPY AVAILABLE

ENACTMENT OF S. 1022 WOULD GRANT STATUTORY AUTHORITY FOR ELIGIBILITY OF TRIBALLY-OWNED BUSINESSES UNDER THE SECTION 8(A) PROGRAM AND THEREBY ASSURE TRIBAL ACCESS TO AN IMPORTANT SOURCE OF FEDERAL GOVERNMENT CONTRACTS. SUCH LEGISLATION IS SUPPORTIVE OF TRIBAL GOVERNMENTS IN THEIR ECONOMIC DEVELOPMENT EFFORTS AND CONSISTENT WITH THE PRESIDENT'S INDIAN POLICY STATEMENT OF JANUARY 14, 1983.

IN ADDITION, S. 1022 IS FURTHER SUPPORTIVE OF THE CONGRESSIONAL FINDING IN THE SMALL BUSINESS ACT THAT "THE BROADENING OF SMALL BUSINESS OWNERSHIP AMONG GROUPS THAT OWN AND CONTROL LITTLE PRODUCTIVE CAPITAL IS ESSENTIAL TO PROVIDE FOR THE WELL-BEING OF THIS NATION BY PROMOTING THEIR INCREASED PARTICIPATION IN THE FREE ENTERPRISE SYSTEM OF THE UNITED STATES." FINALLY, ENACTMENT OF S. 1022 WOULD NOT INCUR ANY ADDITIONAL COST TO THE FEDERAL GOVERNMENT.

WITH RESPECT TO THE AMENDMENTS PROPOSED BY SBA, WE SHARE THEIR CONCERN OVER THE POSSIBILITY OF "FRONT COMPANIES" GAINING CONTROL OF SECTION 8(A) INDIAN COMPANIES THROUGH THIRD PARTY CONTRACTS. S. 1022 LEAVES OPEN THE DOOR FOR SUCH AN OCCURENCE.

UNDER THE PRESENT ACT, INDIAN TRIBES DO CONSULT WITH OR HIRE THIRD PARTY FIRMS FOR MANAGEMENT EXPERTISE. MANY TRIBAL MEMBERS OR TRIBES, ESPECIALLY SMALLER TRIBES, ARE ONLY NOW BEGINNING TO ACQUIRE THE KNOWLEDGE AND EXPERTISE OF TODAY'S BUSINESS WORLD. IT IS IMPORTANT THAT THE USE OF THIRD PARTY MANAGEMENT CONSULTANTS AND CONTRACTORS INCLUDE PROVISIONS FOR THE TRAINING OF DAY-TO-DAY MANAGEMENT, AND AT ALL TIMES BE CONTROLLED BY THE TRIBE OR TRIBAL CONCERN.

BEST COPY AVAILABLE

S. 1022, AS PRESENTLY WRITTEN, WOULD DEFINE AN ELIGIBLE SECTION 8(A) CONCERN AS:

> "A SMALL BUSINESS CONCERN MEETS THE REQUIREMENTS OF THIS SUBPARAGRAPH IF THE MANAGEMENT AND DAILY BUSINESS OPERATIONS OF SUCH SMALL BUSINESS CONCERN ARE -- (ii) CONDUCTED BY ANY PERSON PURSUANT TO A CONTRACT . . . ."

THIS LANGUAGE HAS BEEN INTERPRETED TO MEAN THAT ONCE HIRED THE THIRD PARTY CONSULTING FIRM MAY NOT BE RESPONSIBLE OR CONTROLLED BY THE TRIBE. THERE IS NO PROVISON FOR ASSURING THAT THE TRIBE OR TRIBAL CONCERN MAINTAINS MANAGEMENT CONTROL.

WE FEEL THAT, AT LEAST DURING THE INITIAL STAGES OF DEVELOPMENT OF THE BUSINESS, THE TRIBAL CONCERN MUST BE ABLE TO CONTRACT FOR MANAGERIAL EXPERTISE, BUT NOT AT THE EXPENSE OF LOSING CONTROL OF THE BUSINESS, AND POSSIBLY THEIR DESIGNATION AS A SECTION 8(A) CONCERN. THEREFORE, WE JOIN THE SBA IN THEIR CONCERNS ABOUT THESE PROVISIONS OF S. 1022 AS WRITTEN.

WE UNDERSTAND, FROM DISCUSSION WITH THE SMALL BUSINESS ADMINISTRATION THAT SECTION 8(A) FIRMS ARE PERMITTED UNDER CURRENT LAW TO HAVE MANAGEMENT ASSISTANCE AGREEMENTS WHEN THE SECTION 8(A) FIRM WILL GAIN SIGNIFICANT MANAGEMENT SKILLS AND EXPERIENCE. THEREFORE, WE BELIEVE THAT ANY ADDITIONAL AMENDING LANGUAGE IS UNNECESSARY ON MANAGEMENT ASSISTANCE AND RECOMMEND THAT ALL LANGUAGE ON MANAGEMENT ASSISTANCE BE DELETED FROM THE BILL.

THIS CONCLUDES MY STATEMENT AND I WILL BE PLEASED TO RESPOND TO ANY QUESTIONS THE THE COMMITTEE MAY HAVE.

BEST COPY AVAILABLE

STATEMENT

OF THE

NATIONAL CONGRESS OF AMERICAN INDIANS

2020 "I" STREET, N.W. 320

WASHINGTON, D.C. 20006

submitted to

UNITED STATES SENATE

COMMITTEE ON SMALL BUSINESS

May 11, 1983

The National Congress of American Indians (NCAI) represents 150 Indian and Alaskan Tribes throughout the United States. NCAI was established in 1944 and now serves a diverse population of Indian and Alaska Native peoples.

On behalf of NCAI's member tribes, we express strong support of Senator Andrews' introduction of S. 1022, a bill to amend Section 8(a) of the Small Business Act, to treat businesses owned by Indian tribes as "socially and economically disadvantaged small business concerns".

During NCAI's 39th Annual Convention held in Bismarck, North Dakota, on September 29-October 1, 1982, tribal delegates adopted two separate resolutions supporting Senate Bill 2702. We are submitting copies of our resolutions. The Devil's Lake Sioux Tribe and National Tribal Chairman's Association submitted independent testimony before the Senate Subcommittee on Small Business. The NCAI's Economic Development Committee registered its support and NCAI's support by adopting the resolutions submitted and including language in their policy statement to support the passage of this legislation.

NCAI supports passage of Senate Bill 1022 as the reintroduced version of Senate Bill 2702. In order to further the opportunity for tribes to become self-sufficient, it is necessary to insure that tribes are given every opportunity to participate in the SBA 8(a) program. We believe the clarifications proposed by S. 1022 will be of significant benefit to tribal economies and tribal enterprises.

On October 8, 1982 the SBA General Counsel issued an opinion that firms owned by American Indian tribes are eligible for the 8(a) program participation provided that the daily management and control of the enterprise is vested in tribal members who have been found to qualify as socially and economically disadvantaged individuals. Although this opinion was issued directly from the SBA National Office, we are informed by member tribes that tribally-owned enterprises are encountering problems applying for certification through the regional and district SBA offices. It is not statistically documented as to how many tribal enterprises applying for certification have been denied or how many tribally-owned businesses apply for 8(a) certification. It is a documented fact, however, that the tribal interest in the SBA 8(a) program is priority concern of tribes.

NCAI would like to commend the SBA General Counsel for their recognition of Tribal Councils as eligible participants in the 8(a) program. The success of Indian tribes in providing employment and a source of revenue through development of business enterprise is an important fact and priority in furthering economic development.

The National Congress of American Indians respectfully expresses their appreciation to Senator Mark Andrews and supporting Senators for introduction of S. 1022. In passage of this legislation, tribes will be one step further in developing and pursing their economic development concerns.

Excerpt from NCAI Economic Development Committee Policy Statement adopted at the 39th Annual Convention

INDIAN TRIBAL ENTERPRISE ELIGIBILITY FOR SMALL BUSINESS ACT 8(a) CERTIFICATION

Representatives of the NCAI Economic Development Committee testified before the House Committee on Small Business on June 14, 1982 at an Oversight hearing on minority participation in SBA programs. At that hearing the NCAI witnesses emphasized the difficulties that Indian tribal enterprises and individually-owned Indian businesses had encountered in participating in the competitive opportunities for minority-owned firms to receive government procurement contract work.

The members of the committee were responsive to the Indian witnesses and offered to work with the Indian organizations in whatever way would be appropriate to focus their oversight attention.

In reaction to a legal opinion by the SBA General Counsel's Office, Senator Andrews from North Dakota drafted and introduced an amendment to the SBA Act which would specifically override legal counsel's opinion and declare Indian tribally-owned business enterprises eligible for 8(a) certification. NCAI Economic Development Committee representatives have worked with Senator Andrews' office in generating Indian support for Senator Andrews' amendment in urging that the Senate Small Business Committee expedite action on this proposal in the 97th Congress.

NATIONAL CONGRESS OF AMERICAN INDIANS

202 E STREET, N.E., WASHINGTON, D.C. 20002 (202) 546-1168

56-83-ED

EXECUTIVE DIRECTOR
Ronald P. Andrade
Luiseno-Diegueno

EXECUTIVE COMMITTEE

PRESIDENT
Joe De La Cruz
Quinault

FIRST VICE-PRESIDENT
Ralph Eluska
Aleut

RECORDING SECRETARY
Ella Mae Horse
Cherokee

TREASURER
Hollis D. Stabler, Jr.
Omaha

AREA VICE PRESIDENTS

ABERDEEN AREA
Robert Chasing Hawk
Cheyenne River Sioux

ALBUQUERQUE AREA
Guy Pinnecoose, Jr.
Southern Ute

ANADARKO AREA
Newton Lamar
Wichita

BILLINGS AREA
E.W. (Bill) Mangeau
Salish-Kootenai

JUNEAU AREA
Clifford A. Black
Eskimo

MINNEAPOLIS AREA
Gordon Thayer
Lac Courte Oreilles/Ojibway

MUSKOGEE AREA
Perry Wheeler
Cherokee

NORTHEASTERN AREA
Elmer John
Seneca

PHOENIX AREA
Anthony Drennan
Colorado River Indian Tribes

PORTLAND AREA
Russell Jim
Yakima

SACRAMENTO AREA
Juanita Dixon
Luiseno

SOUTHEASTERN AREA
Eddie Tullis
Poarch Band of Creeks

Resolution
Devils Lake Sioux Tribe

WHEREAS; Indian tribes are having difficulty of meeting a definition of socially and economically disadvantaged small business concerns for the purposes of Section 8(a) of the Small Business Act adminstered by the Small Business Administration; and

WHEREAS; Section 8(a) of the Small Business Act is an important measure for economic progress for Indian tribes in Indian country in that it provides jobs and opportunities for economic self-sufficiency; and

WHEREAS; recent interpretations by the Small Business Administration of Section 8(a) of the Small Business Act have made it difficult, if not impossible, for tribes to participate in the 8(a) Small Business program; and

WHEREAS; Senator Mark Andrews of North Dakota, Senator Quentin Burdick of North Dakota, Senator Max Baucus of Montana, Senator John Melcher of Montana, and Senator Thad Cochran of Mississippi have introduced Senate Bill 2702 which would make provision for Indian tribes to participate in the 8(a) program of the Small Business Administration.

NOW THEREFORE BE IT RESOLVED, that the National Congress of American Indian goes on record supporting the passage of Senate Bill 2702 and urges all members to lobby their congressmen for passage.

/s/ Frank Myrick, Vice-Chairman
Devils Lake Sioux Tribe
Fort Totten Reservation

Incorporated into body of NCAI Economic Development Committee Report

NATIONAL CONGRESS OF AMERICAN INDIANS

202 E STREET, N.E., WASHINGTON, D.C. 20002 (202) 546-1168

60-83-ED

EXECUTIVE DIRECTOR
Ronald P. Andrade
Luiseno-Diegueno

EXECUTIVE COMMITTEE

PRESIDENT
Joe De La Cruz
Quinault

FIRST VICE-PRESIDENT
Ralph Ehanis
Aleut

RECORDING SECRETARY
Ella Mae Horse
Cherokee

TREASURER
Hollis D. Stabler, Jr.
Omaha

AREA VICE PRESIDENTS

ABERDEEN AREA
Robert Chasing Hawk
Cheyenne River Sioux

ALBUQUERQUE AREA
Guy Pinnecoose, Jr.
Southern Ute

ANADARKO AREA
Newton Lamar
Wichita

BILLINGS AREA
E.W. (Bill) Mangeau
Salish-Kootenai

JUNEAU AREA
Clifford A. Black
Eskimo

MINNEAPOLIS AREA
Gordon Thayer
Lac Courte Oreilles/Ojibway

MUSKOGEE AREA
Perry Wheeler
Cherokee

NORTHEASTERN AREA
Elmer John
Seneca

PHOENIX AREA
Anthony Drennan
Colorado River Indian Tribes

PORTLAND AREA
Russell Jim
Yakima

SACRAMENTO AREA
Juanita Dixon
Luiseno

SOUTHEASTERN AREA
Eddie Tullis
Poarch Band of Creeks

Resolution
National Tribal Chairman's Association

WHEREAS; Senate Bill 2702 has been introduced into the U.S. Senate to amend Section 8A of the Small Business Act to treat businesses owned by Indian tribes as social and economically disadvantaged small business concerns; and

WHEREAS, this bill is necessary because of recent interpretation of the law by the Small Business Administration has made it difficult if not impossible for Indian tribes to meet the definition of socially and economically disadvantaged small business concerns; and

WHEREAS; Senate Bill 2702, which has been introduced by Senator Andrews of North Dakota and supported by many of the Senators from Indian Country to rectify the problem of whether or not businesses owned in part or whole by Indian tribes would be able to participate in the 8A set aside programs of the Small Business Administration; and

WHEREAS; it would appear that it would be a great error for all Indian people not to support or be informed of Senate Bill 2702.

THEREFORE BE IT RESOLVED, by the National Tribal Chairman's Association that it support the continued efforts of Senate Bill 2702 and the good Senators involved in such action, for the benefit of all Indian tribes and their attempt of alleviating the government dependence through the attempt of tribes to enter the private sector.

Incorporated into body of Economic Development Committee Report

LLOYD V. ANDERSON
LUANN E. BAILEY
SUSAN P. BEHLKE
RONALD G. BIRCH
WILLIAM H. BITTNER
WILLIAM P. BRYSON
RODNEY B. CARMAN
JOSEPH M. CHOMSKI
JACK D. CLARK
LARRY S. COHN
PAUL L. DILLON
ERIC A. EISEN
JOSEPH W. EVANS
JOSEPH W. GELDHOFF
PAUL H. GRANT
TIMOTHY M. HAAKE *
HAL R. HORTON
CAROL A. JOHNSON
MARC W. JUNE
STANLEY T. LEWIS
JEFFREY B. LOWENFELS
CATHARINE C. MACKAY-SMITH *
PATRICK H. OWEN
MICHAEL J. PARISE
SUZANNE C. PESTINGER
MICHAEL V. REUSING
ELISABETH H. ROSS
WILLIAM R. SATTERBERG
E. BUDD SIMPSON
DANIEL W. WESTERBURG

LAW OFFICES
BIRCH, HORTON, BITTNER, PESTINGER AND ANDERSON
A PROFESSIONAL CORPORATION
1140 CONNECTICUT AVE., N.W., SUITE 1100
WASHINGTON, D.C. 20036
(202) 659-5800

1127 WEST SEVENTH AVENUE
ANCHORAGE, ALASKA 99501
(907) 276-1550
TELEX 25-356

711 GAFFNEY ROAD
FAIRBANKS, ALASKA 99701
(907) 452-1666

130 SEWARD STREET, SUITE 411
JUNEAU, ALASKA 99801
(907) 586-2890

* NOT ADMITTED IN ALASKA

May 11, 1983

The Honorable Lowell P. Weicker, Jr.
Chairman, Select Small Business Committee
ATTENTION: Robert Wilson
424 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Weicker:

I am President of Seabic Corporation, a wholly owned subsidiary of Sealaska Corporation ("Sealaska"). Sealaska is an Alaska corporation, 100 percent owned by Alaska Natives, formed pursuant to the Alaska Native Claims Settlement Act. It is engaged in a variety of enterprises, primarily in the State of Alaska, including cannery operations, timber harvesting, mineral development, construction supply and small business financing.

Although I am an officer of Seabic, I speak for all of Sealaska's subsidiaries in voicing our unequivocal support for S. 1022, introduced in the Senate on April 26, 1983, and now pending before the Senate Committee on Small Business.

No one would disagree that American Natives have been socially and economically disadvantaged for much of the history of our nation. The purpose of Section 8 of the Small Business Act is to provide an equitable remedy for groups that have not be able to achieve an equal footing in the free market system, because of the social and economic disadvantages they have suffered as a class. The policy expressed by the Act is that only through "full and free competition" can "free markets", "free entry into business" and "opportunities for the expression and growth of personal initiative and individual judgment be assured" 15 U.S.C. §631(a). Because Native Americans have as a group historically suffered economic and social disadvantage,

this legislation would further the purpose and policy of the Act while also reducing the federal government workforce time and effort spent to assess the qualifications under the Act of a particular "Indian tribe" applicant.

As you are aware, S. 1022 would amend Section 8(a) of the Small Business Act to treat small business concerns owned and controlled by "Indian tribes" in the same fashion that other socially and economically disadvantaged small business concerns are treated. The bill further provides that the term "Indian tribe" includes Alaska Native village or regional or village corporations. As a result, these villages and enterprises would be eligible for the benefits now generally afforded to other similarly situated disadvantaged small business concerns.

The Alaska Native Claims Settlement Act recognized that Alaskan Natives are socially and economically disadvantaged, and was enacted to help meet the "economic and social needs" of Alaskan Natives. If the instant legislation is passed, Congress would be taking an affirmative step towards recognizing and implementing the expressed remedial policy of the Alaska Native Claims Settlement Act "to protect and promote the rights (and) welfare of Natives as citizens of the United States". Alaska Native Claims Settlement Act, 43 U.S.C. 1601 et seq. Thus this legislation, S.1022, is also consonant with and furthers the objectives of the Alaska Native Claims Settlement Act in allowing Alaska Natives to gain the social and economic independence enjoyed by other citizens.

In urging this Committee to report favorably on S. 1022, we must note the special nature of Native-controlled organizations that distinguishes these entities from other classes eligible for treatment as "socially and economically disadvantaged small business concern[s]." This nature results not from any special status or entitlement to protection and benefits of Native Americans heretofore recognized by the federal government as a result of treaty or statute. Rather, it springs from the historical and social relationship of individual Native Americans to their society, an identification with roots that dip far into American pre-history and remain alive today, in distinct contrast to the looser societies of other socially and economically disadvantaged Americans.

Unlike these other groups, a substantial proportion of our "wealth" has traditionally been dedicated to and thereby focused through the tribe or village unit. A tribe or village unit consisting of individually poor people may therefore benefit to some degree from a wealth that its individual members do not enjoy, with some incremental advantage to the Native American beneficiaries of its successes. This dedication of some individual wealth and effort to the collective welfare is institutionalized, in the case of Alaska villages and regional or village corporations, in the Alaska Native Claims Settlement Act, which grants to these entities land and natural resources to

which we as a people have aboriginal claims. Like our Native brothers and sisters elsewhere, however, we remain handicapped in our ability to compete because, individually, we continue to lack the wealth of mainstream Americans and because we remain victims of latent prejudice and cultural differences that any collective economic strength is powerless to overcome. In fact, prejudice against Native Americans remains an effective limitation on whatever economic strength we have, with the result, we believe, that we are relatively less of a force in the marketplace than we should be.

In sum, we believe that American Native organizations, be they villages, tribes or federally sanctioned corporations, suffer, as institutions, from the very same social and economic disadvantages that individual Native Americans, as well as other minorities, suffer from. We should not be put to special tests merely because our capitol-holding and -generating institutions are themselves wealthier than their economically and socially disadvantaged individual owners. Put otherwise, the fact that we as individuals have such institutions at all as a residue of our sovereignty ought not to be a basis for denying us collectively the treatment that other enterprises of more recent vintage, owned and controlled by a random collection of socially and economically disadvantaged individuals, enjoy.

For these reasons, we urge your Committee to report favorably on S. 1022 to assure that Alaskan Natives fit within the letter of the Small Business Act.

With best regards,

Al Williams by EAE

Al Williams
Seabic Corporation

By: Eric A. Eisen, Esquire
Birch, Horton, Bittner,
Pestinger & Anderson

Attorney for Sealaska Corp.

BNS:kaj

LAW OFFICES
SONOSKY, CHAMBERS, SACHSE & GUIDO
1050 31ST STREET, N.W.
WASHINGTON, D.C. 20007
TELEPHONE
(202) 342-9131

MARVIN J. SONOSKY
HARRY R. SACHSE
REID PEYTON CHAMBERS
KENNETH J. GUIDO, JR.

WILLIAM R. PERRY
LLOYD BENTON MILLER
KEVIN A. GRIFFIN
MARY V. BARNEY
LOFTUS E. BECKER, JR.
DONALD J. SIMON

May 20, 1983

MEMORANDUM IN RESPONSE TO SBA's PROPOSED AMENDMENTS TO S. 1022, A BILL TO AMEND SECTION 8(a) OF THE SMALL BUSINESS ACT

This memorandum is addressed to the three amendments to S. 1022 suggested in SBA's statement presented at the hearing held May 11, 1983.

Of the three amendments suggested by SBA, one objects to extending Section 8(a) to tribes recognized by states, but not the United States. That amendment does not affect our clients and we offer no comment. The other two, for all practical purposes, would deny federally recognized tribes participation in Section 8(a) benefits.

SBA's position seems to be that, as the Act is now written, tribes are excluded from Section 8(a) participation on the ground that neither tribes, nor tribally controlled corporations, are "socially and economically disadvantaged individuals" within the meaning of the 1978 amendment to Section 8(a). Act of October 24, 1978, P.L. 95-507, Title II, c. 1, sec. 202(a), 15 U.S.C. 637(a)(4) (hereafter P.L. 95-507).

S. 1022 would modify the 1978 amendment (Section 637(a)(4)) explicitly to extend Section 8(a) benefits to businesses at least 51% owned by Indian

tribes, and to permit such businesses to be "conducted" by a manager under contract with a tribe, provided SBA approves the contract.

If S. 1022 is amended as proposed by SBA, tribally owned small business concerns, for all practical purposes, would be barred from the 8(a) program. SBA equates Indian tribes with groups of minority individuals. The two SBA amendments under discussion would require that to be eligible, a tribe must prove that as an entity it is "socially and economically disadvantaged" and that tribal corporations cannot retain management assistance even under a contract subject to SBA approval. These proposals are contrary to the overall intent of the highly remedial SBA Act, contrary to SBA's own long administrative practice, contrary to the underlying objective of Section 8(a), and of course would defeat the whole purpose of S. 1022 - which is to declare corporations, chartered and owned by Indian tribes, eligible for the 8(a) program.

To my knowledge, Indian tribes have participated under Section 8(a) since 1968. See Sen. Report No. 95-1070, 95th Cong. 2d sess., p. 13. In that year SBA subcontracted with a tribal corporation wholly owned by the Fort Peck Tribes to recondition M-16 rifles under a management contract approved by SBA. At that time the Small Business Act authorized aid to "small business concerns" defined as "one which is independently owned and operated and which is not dominant in its field of operation." (15 U.S.C. 632.) Up to 1975 SBA consistently construed and administered this language to include as "small business concerns" under 8(a), corporations owned by Indian tribes.

In 1975, SBA, particularly the Denver Regional Office, initiated what the Tribes perceived to be an attack aimed at eliminating tribes from Section 8(a) benefits. First the General Counsel ruled that small business concerns organized as corporations under tribal law were ineligible - that Section 8(a) extended only to corporations organized under state law. SBA's General Counsel advised me that SBA "would have no objection if the stock in the [tribal corporation] was owned entirely by the tribe ***, provided that the corporation itself was formed under state law." (Letter dated April 30, 1975 to Marvin J. Sonosky.)

The Administrator overruled the General Counsel's view that tribally created corporations were not eligible. The General Counsel's office conceded defeat but simultaneously insisted that if tribes could create corporations they were governments and therefore were ineligible for SBA loans. (Memorandum dated July 30, 1976 from Assistant General Counsel Maxine Wood to William P. Gennetti, Deputy General Counsel.) That ruling would have effectively eliminated tribes from Section 8(a) benefits. To overcome this wholly unwarranted action, Congress in the 1978 Act (P.L. 507) added what is now 15 U.S.C. 632(d) and amended 15 U.S.C. 636(a), thus explicitly authorizing the Administration "to make loans to any qualified small business concern including those [100%] owned by qualified Indian tribes ***."

In the same 1978 enactment (P.L. 95-507) Congress injected the term "socially and economically disadvantaged small business concern" into

Section 8(a) and defined it as one "which is at least 51% owned by one or more socially and economically disadvantaged individuals." (15 U.S.C. 637(a)(4).) Prior to that time the phraseology had appeared only in SBA's regulations. And significantly under those regulations, SBA consistently recognized business concerns owned by tribes as eligible for Section 8(a) benefits including corporations owned 100% by tribes. (See the General Counsel's letter of April 30, 1975 referred to at page 3 above.) The legislative history of the 1978 amendments makes amply clear that Congress intended to do no more than supply a "statutory basis" to the 8(a) program as reflected by the administrative practice of at least the preceding ten years (1968-1978), under which SBA recognized a tribally owned small business concern as a "socially and economically disadvantaged small business concern" eligible under Section 8(a). Sen. Report No. 95-1070, 95th Cong. 2d sess., pp. 13-14 (1978).

Following the 1978 adoption of P.L. 95-507, SBA undertook to use the "socially and economically disadvantaged" amendment as a tool to rid itself of tribally owned businesses. SBA invoked two grounds: First, that the small business concern was owned by a tribe, and not by at least 51% "socially and economically disadvantaged individuals": and Second, that management was not in the hands of one or more of such individuals. In the case of the Fort Peck Tribes and the Devils Lake Tribe, SBA, in late 1982, administratively backed off from this position when it correctly construed the law and administratively recognized the Fort Peck and Devils Lake Tribes as eligible under 8(a).

However, before this Committee, SBA would use S. 1022 as a vehicle for abandoning its most recent administrative position. SBA's two amendments would eliminate tribally owned small business concerns, would eliminate the Tribes' small business concern at Fort Peck, currently providing 304 jobs, and would kill all future hopes for jobs in important numbers. The same would be true at Devils Lake. The Tribes would be better off under existing law, than the law amended as SBA suggests. At least now SBA is hard put to explain away it own 1982 administrative construction and to explain why Congress in the same statute (P.L. 95-507) would direct the Administration to make loans to qualified Indian tribes that own 100% of the business (15 U.S.C. 632(d)) and simultaneously direct the Administration to reject tribally owned small business concerns for Section 8(a) contracts. Without 8(a), of course, the loan feature is virtually meaningless. Congress authorized loans to small businesses owned 100% by the tribes because it contemplated such businesses were eligible under 8(a).

SBA's proposals may stem from a misconception of Indian tribes. SBA would place Indian tribes on the same level as groups of minority individuals. ("We would favor amending the bill to provide that tribes would have the same status as the other named minority groups ***.") (Wright Statement, p. 6.) But an Indian tribe is not a collection of individuals in the sense of a partnership, or a voluntary association, or a corporation. An Indian tribe is an entity, a federal responsibility, bound to the United States by treaty, statutes and moral considerations. As an entity,a tribe may, as is the case of the Navajo

Tribe, have tens of millions of dollars held by the United States in the Treasury in trust, own 16 million acres valued in the billions, all held in the name of the United States in trust for the Navajo Tribe. Yet the Navajo Tribe has a population of about 160,000, an unemployment rate of 80% and the lowest per capita income in the country. (See Senator Goldwater's letter of April 11, 1983 to President Reagan, reprinted in Cong. Record, April 12, 1983, p. S. 4466; also, U. S. News and World Report, May 23, 1981, pp. 70-72, 88.) I use the Navajo Tribe as an example because it is the largest and richest American Indian tribe. The Fort Peck Tribes, as an entity, possess substantial assets, yet they are but a small fraction of what the Navajo Tribe owns. Thanks to 8(a) our unemployment rate is very much lower.

Under SBA's two proposed amendments, we forecast SBA regulations calling on each tribal applicant to demonstrate that as an entity it is "socially and economically disadvantaged." Under such a test the benefits of Section 8(a) would be denied where needed the most. There would be no contracts providing employment. If the test is whether the reservation population of Indians is socially and economically disadvantaged as distinguished from the tribal entity, we would have no concern. Probably every federally recognized reservation tribe in the 50 states would qualify. And that is what S. 1022 was designed to ensure.

We deem it significant that SBA proposed no language to support its proposed amendments, but simply offered to work with the Committee and the

Department of the Interior in developing language. The language employed is of critical importance. Should matters reach that stage, on behalf of the Fort Peck Tribes, I urge that I be afforded an opportunity to participate in such discussions.

There is a vast gap between the spirit and purpose of Section 8(a) and SBA's implementation and administration of 8(a) with respect to Indian tribes. S. 1022 would greatly narrow that gap. But, if SBA's two amendments prevail, reservation Indians who must act through their duly elected tribal government, will be denied the most worthwhile benefit the United States can offer - jobs - the opportunity to work and earn and live on a decent standard.

Respectfully submitted,

/s/ Marvin J. Sonosky

Marvin J. Sonosky
Sonosky, Chambers, Sachse & Guido
1050 31st Street, N.W.
Washington, D. C. 20007

General Counsel, Assiniboine and Sioux
Tribes of the Fort Peck Reservation,
Montana

The CHAIRMAN. Gentlemen, I want to thank you very much for taking your time to testify before this committee. Hopefully, your efforts will produce results and we will have this bill out of here in favorable fashion within the next couple of weeks.

Senator BAUCUS. Mr. Chairman, I think Mr. Martin has another point to make.

Mr. MARTIN. I just wanted to add to what Mr. Hollow was saying. I think that the SBA should have some consultation with the tribes before they write the regulations.

The CHAIRMAN. Gentlemen, I thank you, and the committee will stand in adjournment.

[Whereupon, at 3:01 p.m., the committee recessed, to reconvene at the call of the Chair.]

○